

(Added Pub. L. 100-322, title IV, § 412(a), May 20, 1988, 102 Stat. 547, § 4209; renumbered § 7809 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, § 14(e)(8), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

## AMENDMENTS

1991—Pub. L. 102-40, § 402(a), (b)(1), renumbered section 4209 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Pub. L. 102-54 amended subsec. (a)(1) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "child-care" for "child care".

Pub. L. 102-40, § 402(d)(1), substituted "7361" for "4161".

Subsec. (a)(2). Pub. L. 102-54 amended subsec. (a)(2) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "child-care" for "child care".

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and in pars. (1) and (2).

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in par. (1).

Pub. L. 102-54 amended subsec. (c) as in effect before the enactment of Pub. L. 102-40 by substituting "child-care" for "child care" in introductory provisions and in par. (2).

Subsec. (d). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (e). Pub. L. 102-54 amended subsec. (e) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "child-care" for "child care".

## § 7810. Exemption from personnel ceilings

Persons who are employed by the Service and compensated from the revolving fund established by section 7804 of this title may not be considered to be employees of the Department for the purposes of any personnel ceiling which may otherwise be applied to employees of the Department by the President or an official of the executive branch.

(Added Pub. L. 100-322, title IV, § 414(b)(1), May 20, 1988, 102 Stat. 549, § 4210; renumbered § 7810 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

## AMENDMENTS

1991—Pub. L. 102-40, § 402(a), (b)(1), renumbered section 4210 of this title as this section.

Pub. L. 102-83 substituted "Department" for "Veterans' Administration" in two places.

Pub. L. 102-40, § 402(d)(1), substituted "7804" for "4204".

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## AMENDMENTS

1991—Pub. L. 102-86, title IV, § 401(b)(2), Aug. 14, 1991, 105 Stat. 422, inserted "Enhanced-Use Leases of Real Property" in item for chapter 81.

Pub. L. 102-40, title IV, § 402(c)(2), May 7, 1991, 105 Stat. 239, substituted "8101" for "5001" in item for chapter 81, "8201" for "5070" in item for chapter 82, "8301" for "5101" in item for chapter 83, and "8501" for "5201" in item for chapter 85.

1972—Pub. L. 92-541, § 2(b), Oct. 24, 1972, 86 Stat. 1107, added item for chapter 82.

## CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

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#### AMENDMENTS

1994—Pub. L. 103-446, title XII, § 1201(h)(5), (6), Nov. 2, 1994, 108 Stat. 4688, inserted “ENHANCED-USE” before “LEASES OF REAL” in chapter heading and “and certain other Federal agencies” after “Department” in item 8126.

1992—Pub. L. 102-585, title VI, § 603(a)(2), Nov. 4, 1992, 106 Stat. 4975, added item 8126.

Pub. L. 102-405, title I, § 103(a)(2), Oct. 9, 1992, 106 Stat. 1975, added items 8157 and 8158.

1991—Pub. L. 102-86, title IV, § 401(b)(1), (3), Aug. 14, 1991, 105 Stat. 422, inserted “; LEASES OF REAL PROPERTY” in chapter heading and added analysis for subchapter V.

Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404, substituted “Department and” for “Veterans’ Administration and” in item 8111.

Pub. L. 102-54, § 14(f)(1), June 13, 1991, 105 Stat. 287, amended the table of sections as in effect immediately before the enactment of Pub. L. 102-40 by transferring item 5016 so as to appear immediately after item 5015 and by substituting “payments” for “Payments” in item 5035.

Pub. L. 102-40, title IV, § 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 5001 to 5056 as 8101 to 8156, respectively.

1988—Pub. L. 100-322, title II, § 205(b), May 20, 1988, 102 Stat. 513, added at end item 5016.

Pub. L. 100-322, title IV, § 403(a)(2), May 20, 1988, 102 Stat. 545, added item 5025.

1986—Pub. L. 99-576, title II, §§ 223(a)(2), 231(c)(2)(B), Oct. 28, 1986, 100 Stat. 3261, 3264, substituted “Parking facilities” for “Garages and parking facilities” in item 5009 and struck out item 5057 “Reports to Congress”.

1985—Pub. L. 99-166, title III, § 302(c)(2), Dec. 3, 1985, 99 Stat. 955, substituted “Operational and construction plans for medical facilities” for “Reports to congressional committees” in item 5007.

1982—Pub. L. 97-174, §§ 3(b)(2), 4(b), May 4, 1982, 96 Stat. 74, 75, substituted “Sharing of Veterans’ Administration and Department of Defense health-care resources” for “Use of Armed Forces facilities” in item 5011, and added item 5011A.

1979—Pub. L. 96-22, title III, § 301(c), June 13, 1979, 93 Stat. 61, substituted “ACQUISITION AND OPERATION OF MEDICAL FACILITIES” for “PROVISIONS RELATING TO HOSPITALS AND HOMES” in heading for subchapter I, substituted “Definitions” for “Hospital and domiciliary facilities” in item 5001, “Acquisition of medical facilities” for “Construction and repair of buildings” in item 5002, “Authority to construct and alter, and acquire sites for, medical facilities” for “Use of Armed Forces facilities” in item 5003, “Congressional approval of certain medical facility acquisitions” for “Garages and parking facilities” in item 5004, “Structural requirements” for “Acceptance of cer-

tain property” in item 5005, “Construction contracts” for “Property formerly owned by National Home for Disabled Volunteer Soldiers” in item 5006, and “Reports to congressional committees” for “Partial relinquishment of legislative jurisdiction” in item 5007, added items 5008 to 5015, and redesignated former items 5011 to 5014 as 5021 to 5024, respectively.

1977—Pub. L. 95-62, § 4(c), July 5, 1977, 91 Stat. 263, substituted “DOMICILIARY, NURSING HOME, AND HOSPITAL CARE” for “NURSING HOME CARE” in heading for subchapter III.

1976—Pub. L. 94-581, title I, § 115(b), Oct. 21, 1976, 90 Stat. 2853, substituted “health services development activities carried out under the National Health Planning and Resources Development Act of 1974” for “programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965” in item 5056.

1973—Pub. L. 93-82, title III, § 302(3), Aug. 2, 1973, 87 Stat. 195, added item 5007.

1966—Pub. L. 89-785, title II, §§ 201(b), 202(c), 2, Nov. 7, 1966, 80 Stat. 1372, 1373, 1376, substituted “Garages and parking facilities” for “Garages on hospital and domiciliary reservations” in item 5004, inserted “and to negotiate for common services” in item 5012, and added heading for subchapter IV and items 5051 to 5056 and 5075.

1964—Pub. L. 88-450, § 4(b), Aug. 19, 1964, 78 Stat. 503, added heading for subchapter III and items 5031 to 5037.

#### SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 115 of this title.

#### § 8101. Definitions

For the purposes of this subchapter:

(1) The term “alter”, with respect to a medical facility, means to repair, remodel, improve, or extend such medical facility.

(2) The terms “construct” and “alter”, with respect to a medical facility, include such engineering, architectural, legal, fiscal, and economic investigations and studies and such surveys, designs, plans, working drawings, specifications, procedures, and other similar actions as are necessary for the construction or alteration, as the case may be, of such medical facility and as are carried out after the completion of the advanced planning (including the development of project requirements and preliminary plans) for such facility.

(3) The term “medical facility” means any facility or part thereof which is, or will be, under the jurisdiction of the Secretary for the provision of health-care services (including hospital, nursing home, or domiciliary care or medical services), including any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, trackage facilities leading thereto, abutting sidewalks, accommodations for attending personnel, and recreation facilities associated therewith.

(4) The term “committee” means the Committee on Veterans’ Affairs of the House of Representatives or the Committee on Veterans’ Affairs of the Senate, and the term “committees” means both such committees.

(Added Pub. L. 96-22, title III, § 301(a), June 13, 1979, 93 Stat. 55, § 5001; renumbered § 8101, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5001 of this title as this section.

Par. (3). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

## EFFECTIVE DATE

Section 302 of Pub. L. 96-22 provided that:

“(a) Except as provided in subsection (b) of this section, the amendments made by section 301 [enacting this subchapter, redesignating sections 5011 to 5014 of this title as sections 5021 to 5024 [now 8121 to 8124], respectively, and amending section 5022 [now 8122] of this title as so redesignated] shall take effect on October 1, 1979.

“(b)(1) The amendments made by section 301 shall not apply with respect to the acquisition, construction, or alteration of any medical facility (as defined in section 5001(3) [now 8101(3)] of title 38, United States Code, as amended by section 301(a) of this Act) if such acquisition, construction, or alteration (not including exchange) was approved before October 1, 1979, by the President.

“(2) The provisions of section 5007(a) [now 8107(a)] of title 38, United States Code, as amended by section 301(a) of this Act, shall take effect on the date of the enactment of this Act [June 13, 1979].”

**§ 8102. Acquisition of medical facilities**

(a) The Secretary shall provide medical facilities for veterans entitled to hospital, nursing home, or domiciliary care or medical services under this title.

(b) No medical facility may be constructed or otherwise acquired or altered except in accordance with the provisions of this subchapter.

(c) In carrying out this subchapter, the Secretary—

(1) shall provide for the construction and acquisition of medical facilities in a manner that results in the equitable distribution of such facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility; and

(2) shall give due consideration to excellence of architecture and design.

(d) In considering the need for any project for the construction, alteration, or acquisition (other than by exchange) of a medical facility which is expected to involve a total expenditure of more than \$2,000,000, the Secretary shall give consideration to the sharing of health-care resources with the Department of Defense under section 8111 of this title as an alternative to all or part of such project.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 55, §5002; amended Pub. L. 99-576, title II, §221(a), Oct. 28, 1986, 100 Stat. 3259; renumbered §8102 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(f)(2), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

## AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5002 of this title as this section.

Subsecs. (a), (c). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Subsec. (d). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Pub. L. 102-54 amended subsec. (d) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “section 5011” for “section 5001”.

Pub. L. 102-40, §402(d)(1), amended subsec. (d), as amended by Pub. L. 102-54, by substituting “8111” for “5011”. See above.

1986—Subsec. (d). Pub. L. 99-576 added subsec. (d).

**§ 8103. Authority to construct and alter, and to acquire sites for, medical facilities**

(a) Subject to section 8104 of this title, the Secretary—

(1) may construct or alter any medical facility and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility (including the site of such facility) that the Secretary considers necessary for use as a medical facility; and

(3) in order to assure compliance with section 8110(a)(2) of this title, in the case of any outpatient medical facility for which it is proposed to lease space and for which a qualified lessor and an appropriate leasing arrangement are available, shall execute a lease for such facility within 12 months after funds are made available for such purpose.

(b) Whenever the Secretary considers it to be in the interest of the United States to construct a new medical facility to replace an existing medical facility, the Secretary (1) may demolish the existing facility and use the site on which it is located for the site of the new medical facility, or (2) if in the judgment of the Secretary it is more advantageous to construct such medical facility on a different site in the same locality, may exchange such existing facility and the site of such existing facility for the different site.

(c) Whenever the Secretary determines that any site acquired for the construction of a medical facility is not suitable for that purpose, the Secretary may exchange such site for another site to be used for that purpose or may sell such site.

(d)(1) The Secretary may provide for the acquisition of not more than three facilities for the provision of outpatient services or nursing home care through lease-purchase arrangements on real property under the jurisdiction of the Department of Veterans Affairs.

(2)(A) In carrying out this subsection and notwithstanding any other provision of law, the Secretary may lease, with or without compensation and for a period of not to exceed 35 years, to another party any of the real property described in paragraph (1) of this subsection.

(B) Such real property shall be used as the site of a facility referred to in paragraph (1) of this subsection—

(i) constructed and owned by the lessee of such real property; and

(ii) leased under paragraph (3)(A) of this subsection to the Department for such use and for such other activities as the Secretary determines are appropriate.

(3)(A) The Secretary may enter into a lease for the use of any facility described in paragraph

(2)(B) of this subsection for not more than 35 years under such terms and conditions as may be in the best interests of the Department.

(B) Each agreement to lease a facility under subparagraph (A) of this paragraph shall include a provision that—

(i) the obligation of the United States to make payments under the agreement is subject to the availability of appropriations for that purpose; and

(ii) the ownership of such facility shall vest in the United States at the end of such lease.

(4)(A) The Secretary may sublease any space in such a facility to another party at a rate not less than—

(i) the rental rate paid by the Secretary for such space under paragraph (3) of this subsection; plus

(ii) the amount the Secretary pays for the costs of administering such facility (including operation, maintenance, utility, and rehabilitation costs) which are attributable to such space.

(B) In any such sublease, the Secretary shall include such terms relating to default and non-performance as the Secretary considers appropriate to protect the interests of the United States.

(5) The Secretary shall use the receipts of any payment for the lease of real property under paragraph (2) for the payment of the lease of a facility under paragraph (3).

(6) The authority to enter into an agreement under this subsection—

(A) shall not take effect until the Secretary has entered into agreements under section 316 of this title to carry out at least three collocations; and

(B) shall expire on October 1, 1993.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 56, §5003; amended Pub. L. 101-237, title VI, §603(b), Dec. 18, 1989, 103 Stat. 2097; renumbered §8103 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-446, title XII, §1201(d)(16), Nov. 2, 1994, 108 Stat. 4684.)

#### AMENDMENTS

1994—Subsec. (d)(6)(A). Pub. L. 103-446 substituted “section 316” for “section 230(c)”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5003 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-40, §402(d)(1), substituted “8104” for “5004” in introductory provisions and “8110(a)(2)” for “5010(a)(2)” in par. (3).

Subsecs. (b), (c). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

1989—Subsec. (d). Pub. L. 101-237 added subsec. (d).

#### DEVELOPMENT OF MEDICAL-FACILITY MODULAR COMPONENTS

Pub. L. 99-166, title III, §304, Dec. 3, 1985, 99 Stat. 956, directed Administrator of Veterans' Affairs, not later than one year after Dec. 3, 1985, to develop a modular approach to planning and design of an appropriate Veterans' Administration medical facility for furnishing of hospital care.

### § 8104. Congressional approval of certain medical facility acquisitions

(a)(1) The purpose of this subsection is to enable Congress to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility.

(2) No funds may be appropriated for any fiscal year, and the Secretary may not obligate or expend funds (other than for advance planning and design), for any major medical facility project or any major medical facility lease unless funds for that project or lease have been specifically authorized by law.

(3) For the purpose of this subsection:

(A) The term “major medical facility project” means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$3,000,000, but such term does not include an acquisition by exchange.

(B) The term “major medical facility lease” means a lease for space for use as a new medical facility at an average annual rental of more than \$300,000.

(b) In the event that the President or the Secretary proposes to the Congress the funding of any construction, alteration, lease, or other acquisition to which subsection (a) of this section is applicable, the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Such prospectus shall include—

(1) a detailed description of the medical facility to be constructed, altered, leased, or otherwise acquired under this subchapter, including a description of the location of such facility and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase and to the sharing of health-care resources with the Department of Defense under section 8111 of this title;

(2) an estimate of the cost to the United States of the construction, alteration, lease, or other acquisition of such facility (including site costs, if applicable); and

(3) an estimate of the cost to the United States of the equipment required for the operation of such facility.

(c) Not less than 30 days before obligating funds for a major medical facility project approved by a law described in subsection (a)(2) of this section in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent, the Secretary shall provide the committees with notice of the Secretary's intention to do so and the reasons for the specified amount being exceeded.

(d) In any case in which the Secretary proposes that funds be used for a purpose other than the purpose for which such funds were appropriated, the Secretary shall promptly notify each committee, in writing, of the particulars

involved and the reasons why such funds were not used for the purpose for which appropriated.

(e) The Secretary may accept gifts or donations for any of the purposes of this subchapter.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 56, §5004; amended Pub. L. 99-166, title III, §§301, 303, Dec. 3, 1985, 99 Stat. 954, 955; Pub. L. 99-576, title II, §221(b), Oct. 28, 1986, 100 Stat. 3259; Pub. L. 100-322, title IV, §422, May 20, 1988, 102 Stat. 553; renumbered §8104 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §301(a), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-79, §3(a), Aug. 13, 1993, 107 Stat. 771.)

#### AMENDMENTS

1993—Subsec. (a)(3)(A). Pub. L. 103-79 substituted “\$3,000,000” for “\$2,000,000”.

1992—Subsec. (a)(2). Pub. L. 102-405, §301(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “It shall not be in order in the Senate or in the House of Representatives to consider a bill, resolution, or amendment which would make an appropriation for any fiscal year which may be expended for a major medical facility project or a major medical facility lease unless—

“(A) such bill, resolution, or amendment specifies the amount to be appropriated for that project or lease,

“(B) the project or lease has been approved in a resolution adopted by the Committee on Veterans' Affairs of that House, and

“(C) the amount to be appropriated for that project or lease is no more than the amount specified in that resolution for that project or lease for that fiscal year.”

Subsec. (a)(3)(B). Pub. L. 102-405, §301(a)(2), inserted “new” after “as a” and substituted “\$300,000” for “\$500,000”.

Subsec. (c). Pub. L. 102-405, §301(a)(3), substituted “law” for “resolution” in two places.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5004 of this title as this section.

Subsec. (b). Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places in introductory provisions.

Subsec. (b)(1). Pub. L. 102-40, §402(d)(1), substituted “8111” for “5011”.

Subsec. (c). Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Secretary's” for “Administrator's”.

Subsecs. (d), (e). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

1988—Subsec. (a)(2). Pub. L. 100-322, §422(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “After the adoption by the committees during a fiscal year of resolutions with identical texts approving major medical facility projects, it shall not be in order in the House of Representatives or in the Senate to consider a bill, resolution, or amendment making an appropriation for that fiscal year or for the next fiscal year which may be expended for a major medical facility project—

“(A) if the project for which the appropriation is proposed to be made is not approved in those resolutions; or

“(B) in the event that the project is approved in the resolutions, if either—

“(i) the bill, resolution, or amendment making the appropriation does not specify—

“(I) the medical facility project for which the appropriation is proposed to be made; and

“(II) the amount proposed to be appropriated for the project; or

“(ii) the amount proposed to be appropriated for the project (when added to any amount previously

appropriated for the project) exceeds the amount approved for the project.”

Subsec. (a)(3), (4). Pub. L. 100-322, §422(b), added par. (3) and struck out former pars. (3) and (4) which read as follows:

“(3) No appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than \$500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.

“(4) For the purpose of this subsection, the term ‘major medical facility project’ means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$2,000,000. Such term does not include an acquisition by exchange.”

Subsec. (c). Pub. L. 100-322, §422(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The estimated cost of any construction, alteration, lease, or other acquisition that is approved under this section, as set forth in the pertinent resolutions described in subsection (a) of this section, may be increased by the Administrator in the contract for such construction, alteration, lease, or other acquisition by an amount equal to the percentage increase, if any, as determined by the Administrator, in construction, alteration, lease, or other acquisition costs, as the case may be, from the date of such approval to the date of contract, but in no event may the amount of such increase exceed 10 per centum of such estimated cost.”

Subsecs. (d) to (f). Pub. L. 100-322, §422(d), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which read as follows: “In the case of any medical facility approved for construction, alteration, lease, or other acquisition by each committee under subsection (a) of this section for which funds have not been appropriated within one year after the date of such approval, either such committee may by resolution rescind its approval at any time thereafter before such funds are appropriated.”

1986—Subsec. (b)(1). Pub. L. 99-576 inserted “and to the sharing of health-care resources with the Department of Defense under section 5011 of this title” at end.

1985—Subsec. (a). Pub. L. 99-166, §301, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “In order to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility—

“(1) no appropriation may be made for the construction, alteration, or acquisition (not including exchanges) of any medical facility which involves a total expenditure of more than \$2,000,000 unless each committee has first adopted a resolution approving such construction, alteration, or acquisition and setting forth the estimated cost thereof; and

“(2) no appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than \$500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.”

Subsec. (b)(1). Pub. L. 99-166, §303, inserted “and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase” after “such facility”.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 301(b) of Pub. L. 102-405 provided that: “The amendments made by subsection (a) [amending this section] shall not apply with respect to any project for which funds were appropriated before the date of the enactment of this Act [Oct. 9, 1992].

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8103, 8107, 8109, 8116 of this title.

**§ 8105. Structural requirements**

(a) Each medical facility (including each nursing home facility for which the Secretary contracts under section 1720 of this title and each State home facility constructed or altered under subchapter III of this chapter) shall be of fire, earthquake, and other natural disaster resistant construction in accordance with standards which the Secretary shall prescribe on a State or regional basis after surveying appropriate State and local laws, ordinances, and building codes and climatic and seismic conditions pertinent to each such facility. When an existing structure is acquired for use as a medical facility, it shall be altered to comply with such standards.

(b)(1) In order to carry out this section, the Secretary shall appoint an advisory committee to be known as the "Advisory Committee on Structural Safety of Department Facilities", on which shall serve at least one architect and one structural engineer who are experts in structural resistance to fire, earthquake, and other natural disasters and who are not employees of the Federal Government.

(2) Such advisory committee shall advise the Secretary on all matters of structural safety in the construction and altering of medical facilities in accordance with the requirements of this section and shall review and make recommendations to the Secretary on the regulations prescribed under this section.

(3) The Associate Deputy Secretary, the Under Secretary for Health or the designee of the Under Secretary for Health, and the Department official charged with the responsibility for construction shall be ex officio members of such advisory committee.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 57, §5005; amended Pub. L. 96-128, title V, §501(e), Nov. 28, 1979, 93 Stat. 987; renumbered §8105, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §§4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

**AMENDMENTS**

1992—Subsec. (b)(3). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

1991—Pub. L. 102-40 renumbered section 5005 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted "1720" for "620".

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1979—Subsec. (a). Pub. L. 96-128 substituted "subchapter III of this chapter" for "section 5031 of this title".

**EFFECTIVE DATE OF 1979 AMENDMENT**

Amendment by Pub. L. 96-128 effective Nov. 28, 1979, see section 601(b) of Pub. L. 96-128, set out as a note under section 1114 of this title.

**TERMINATION OF ADVISORY COMMITTEES**

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year

period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

**§ 8106. Construction contracts**

(a) The Secretary may carry out any construction or alteration authorized under this subchapter by contract if the Secretary considers it to be advantageous to the United States to do so.

(b)(1) The Secretary may obtain, by contract or otherwise, the services of individuals who are architects or engineers and of architectural and engineering corporations and firms, to the extent that the Secretary may require such services for any medical facility authorized to be constructed or altered under this subchapter.

(2) No corporation, firm, or individual may be employed under the authority of paragraph (1) of this subsection on a permanent basis.

(c) Notwithstanding any other provision of this section, the Secretary shall be responsible for all construction authorized under this subchapter, including the interpretation of construction contracts, the approval of materials and workmanship supplied pursuant to a construction contract, approval of changes in the construction contract, certification of vouchers for payments due the contractor, and final settlement of the contract.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 58, §5006; renumbered §8106, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

**AMENDMENTS**

1991—Pub. L. 102-40 renumbered section 5006 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

**§ 8107. Operational and construction plans for medical facilities**

(a)(1) In order to promote effective planning for the orderly construction, replacement, and alteration of medical facilities in accordance with the comparative urgency of the need for the services to be provided by such facilities, the Secretary, after considering the analysis and recommendations of the Under Secretary for Health, shall submit to each committee an annual report on the construction, replacement, alteration, and operation of medical facilities.

(2) Each such report shall contain—

(A) a five-year strategic plan for the operation and construction of medical facilities—

(i) setting forth—

(I) the mission of each existing or proposed medical facility;

(II) any planned change in such mission; and

(III) the operational steps needed to achieve the facility's mission and the

dates by which such steps are planned to be completed; and

(ii) a five-year plan, based on the factors set out in subclause (i) of this clause, for construction, replacement, or alteration projects for each such facility;

(B) a list, in order of priority, of not less than 10 hospitals that, in the judgment of the Secretary, after considering the analysis and recommendations of the Under Secretary for Health, are most in need of construction or replacement; and

(C) general plans (including projected costs, site location, and, if appropriate, necessary land acquisition) for each medical facility for which construction, replacement, or alteration is planned under clause (A)(ii) of this paragraph.

(3) The report under this subsection shall be submitted not later than June 30 of each year.

(b) The Secretary shall submit to each committee not later than January 31 of each year a report showing the location, space, cost, and status of each medical facility (1) the construction, alteration, lease, or other acquisition of which has been approved under section 8104(a) of this title, and (2) which was uncompleted as of the date of the last preceding report made under this subsection.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 58, §5007; amended Pub. L. 99-166, title III, §302(a)-(c)(1), Dec. 3, 1985, 99 Stat. 955; Pub. L. 99-576, title II, §222, Oct. 28, 1986, 100 Stat. 3259; renumbered §8107 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(f)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### AMENDMENTS

1992—Subsec. (a)(1), (2)(B). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5007 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Subsec. (a)(2)(B). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-54 amended subsec. (a)(2)(B) as in effect immediately before the enactment of Pub. L. 102-40 by striking out the second comma before “are most in need of”.

Subsec. (b). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Pub. L. 102-40, §402(d)(1), substituted “8104(a)” for “5004(a)”.

1986—Subsec. (a). Pub. L. 99-576 inserted “, after considering the analysis and recommendations of the Chief Medical Director,” after “Administrator” in pars. (1) and (2)(B).

1985—Pub. L. 99-166, §302(c)(1), substituted “Operational and construction plans for medical facilities” for “Reports to congressional committees” in section catchline.

Subsec. (a)(1). Pub. L. 99-166, §302(a)(1)-(3), designated existing provisions as par. (1), substituted “an annual report on the construction, replacement, alteration, and operation of medical facilities” for “an annual report on the construction, replacement, and alteration of medical facilities”, and struck out provisions relat-

ing to the content of the reports to be submitted to congressional committees and the time such reports were to be submitted.

Subsec. (a)(2), (3). Pub. L. 99-166, §302(a)(4), added pars. (2) and (3).

Subsec. (b). Pub. L. 99-166, §302(b), struck out “(beginning in 1981)” before “a report”, designated existing provisions as cl. (1), and substituted cl. (2) designation for “, in the case of the second and each succeeding report made under this subsection.”.

#### § 8108. Contributions to local authorities

The Secretary may make contributions to local authorities toward, or for, the construction of traffic controls, road improvements, or other devices adjacent to a medical facility if considered necessary for safe ingress or egress.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 58, §5008; renumbered §8108, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5001(g) of this title prior to the general revision of this subchapter by Pub. L. 96-22.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5008 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator”.

#### § 8109. Parking facilities

(a) For the purpose of this section—

(1) The term “garage” means a structure (or part of a structure) in which vehicles may be parked.

(2) The term “parking facility” includes—

- (A) a surface parking lot; and
- (B) a garage.

(3) The term “eligible person” means an individual to whom the Secretary is authorized to furnish medical examination or treatment.

(b) In order to accommodate the vehicles of employees of medical facilities, vehicles used to transport veterans and eligible persons to or from such facilities for the purpose of examination or treatment, and the vehicles of visitors and other individuals having business at such facilities, the Secretary—

(1) may construct or alter parking facilities, and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for any such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility that the Secretary considers necessary for use as a parking facility; and

(3) may operate and maintain parking facilities.

(c)(1) Except as provided in paragraph (2) of this subsection, each employee, visitor, and other individual having business at a medical facility for which parking fees have been established under subsection (d) or (e) of this section shall be charged the applicable parking fee for

the use of a parking facility at such medical facility.

(2) A parking fee shall not be charged under this subsection for the accommodation of any vehicle used to transport to or from a medical facility—

(A) a veteran or eligible person in connection with such veteran or eligible person seeking examination or treatment; or

(B) a volunteer worker (as determined in accordance with regulations which the Secretary shall prescribe) in connection with such worker performing services for the benefit of veterans receiving care at a medical facility.

(3) The Secretary shall collect (or provide for the collection of) parking fees charged under this subsection.

(d)(1) For each medical facility where funds from the revolving fund described in subsection (h) of this section are expended for—

(A) a garage constructed or acquired by the Department at a cost exceeding \$500,000 (or, in the case of acquisition by lease, \$100,000 per year); or

(B) a project for the alteration of a garage at a cost exceeding \$500,000,

the Secretary shall prescribe a schedule of parking fees to be charged at all parking facilities used in connection with such medical facility.

(2) The parking fee schedule prescribed for a medical facility referred to in paragraph (1) of this subsection shall be designed to establish fees which the Secretary determines are reasonable under the circumstances.

(e) The Secretary may prescribe a schedule of parking fees for the parking facilities at any medical facility not referred to in subsection (d) of this section. Any such schedule shall be designed to establish fees which the Secretary determines to be reasonable under the circumstances and shall cover all parking facilities used in connection with such medical facility.

(f) The Secretary may contract (by lease or otherwise) for the operation of parking facilities at medical facilities under such terms and conditions as the Secretary prescribes and may do so without regard to laws requiring full and open competition.

(g) Subject to subsections (h) and (i) of this section, there are authorized to be appropriated such amounts as are necessary to finance (in whole or in part) the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities.

(h)(1) Amounts appropriated pursuant to subsection (g) of this section and parking fees collected under subsection (c) of this section shall be administered as a revolving fund and shall be available without fiscal year limitation.

(2) The revolving fund shall be deposited in a checking account with the Treasurer of the United States.

(3)(A) Except as provided in subparagraph (B) of this paragraph, no funds other than funds from the revolving fund may be expended for the construction, alteration, or acquisition (including site acquisition) of a garage at a medical facility after September 30, 1986.

(B) Subparagraph (A) of this paragraph does not apply to the use of funds for investigations

and studies, surveys, designs, plans, working drawings, specifications, and similar actions not directly involved in the physical construction of a structure.

(i)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities and may be made only as provided for in appropriation Acts.

(2) For the purpose of section 8104(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund (including any funds proposed in such bill, resolution, or amendment to be appropriated to the revolving fund) may be expended for a project involving a total expenditure of more than \$3,000,000 for the construction, alteration, or acquisition (including site acquisition) of a parking facility or facilities at a medical facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 59, §5009; amended Pub. L. 99-576, title II, §223(a)(1), Oct. 28, 1986, 100 Stat. 3259; renumbered §8109 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-79, §3(b), Aug. 13, 1993, 107 Stat. 771.)

#### PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5004 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

#### AMENDMENTS

1993—Subsec. (i)(2). Pub. L. 103-79 substituted “\$3,000,000” for “\$2,000,000”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5009 of this title as this section.

Subsecs. (a) to (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (d)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in concluding provisions.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in subpar. (A).

Subsecs. (d)(2), (e), (f). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (i)(2). Pub. L. 102-40, §402(d)(1), substituted “8104(a)(2)” for “5004(a)(2)”.

1986—Pub. L. 99-576 amended section generally, substituting “Parking facilities” for “Garages and parking facilities” in section catchline and substituting present provisions consisting of subsecs. (a) to (i) for former provisions consisting of subsecs. (a) to (c), and generally revising and expanding section to require VA to establish and collect reasonable parking fees at all facilities where a garage is constructed or acquired or altered at a cost of more than \$500,000 (or leased for more than \$100,000 per year), and allowing discretionary paid parking at all other facilities.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 223(b) of Pub. L. 99-576 provided that:

“(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 28, 1986].

“(2)(A) The amendments made by this section shall not abrogate the provisions of a collective bargaining



agreement which, on the date of the enactment of this Act, is in effect and includes a provision which specifies a termination date for such agreement.

“(B) After the date of the enactment of this Act, if a collective bargaining agreement described in subparagraph (A) is modified, extended, or renewed, such subparagraph shall no longer, as of the date of the modification, extension, or renewal, apply to such agreement.

“(C) In the case of a collective bargaining agreement which on such date of enactment is in effect but has no provision which specifies a termination date, the authorities and requirements in section 5009 [now 8109] of title 38, United States Code, as amended by subsection (a)(1) of this section, to establish and collect parking fees shall take effect on January 1, 1988.

“(3) Section 5009 [now 8109] of title 38, United States Code, as amended by subsection (a)(1) of this section, shall not apply to the expenditure of funds appropriated for a fiscal year prior to fiscal year 1987 for the construction, alteration, or acquisition (including site acquisition) of a parking facility at a Veterans' Administration [now Department of Veterans Affairs] medical facility.”

#### § 8110. Operation of medical facilities

(a)(1) The Secretary shall establish the total number of hospital beds and nursing home beds in medical facilities over which the Secretary has direct jurisdiction for the care and treatment of eligible veterans at not more than 125,000 and not less than 100,000. The Secretary shall establish the total number of such beds so as to maintain a contingency capacity to assist the Department of Defense in time of war or national emergency to care for the casualties of such war or national emergency. Of the number of beds authorized pursuant to the preceding sentence, the Secretary shall operate and maintain a total of not less than 90,000 hospital beds and nursing home beds and shall maintain the availability of such additional beds and facilities in addition to the operating bed level as the Secretary considers necessary for such contingency purposes. The President shall include in the Budget transmitted to the Congress for each fiscal year pursuant to section 1105 of title 31, an amount for medical care and amounts for construction sufficient to enable the Department to operate and maintain a total of not less than 90,000 hospital and nursing home beds in accordance with this paragraph and to maintain the availability of the contingency capacity referred to in the second sentence of this paragraph. The Secretary shall staff and maintain, in such a manner as to ensure the immediate acceptance and timely and complete care of patients, sufficient beds and other treatment capacities to accommodate, and provide such care to, eligible veterans applying for admission and found to be in need of hospital care or medical services.

(2) The Secretary shall maintain the bed and treatment capacities of all Department medical facilities so as to ensure the accessibility and availability of such beds and treatment capacities to eligible veterans in all States and to minimize delays in admissions and in the provision of hospital, nursing home, and domiciliary care, and of medical services furnished pursuant to section 1712 of this title.

(3)(A) The Under Secretary for Health shall at the end of each fiscal year (i) analyze agency-wide admission policies and the records of those

eligible veterans who apply for hospital care, medical services, and nursing home care, but are rejected or not immediately admitted or provided such care or services, and (ii) review and make recommendations regarding the adequacy of the established operating bed levels, the geographic distribution of operating beds, the demographic characteristics of the veteran population and the associated need for medical care and nursing home facilities and services in each State, and the proportion of the total number of operating beds that are hospital beds and that are nursing home beds.

(B) After considering the analyses and recommendations of the Under Secretary for Health pursuant to subparagraph (A) of this paragraph for any fiscal year, the Secretary shall report to the committees, on or before December 1 after the close of such fiscal year, on the results of the analysis of the Under Secretary for Health and on the numbers of operating beds and level of treatment capacities required to enable the Department to carry out the primary function of the Veterans Health Administration. The Secretary shall include in each such report recommendations for (i) the numbers of operating beds and the level of treatment capacities required for the health care of veterans and the maintenance of the contingency capacity referred to in paragraph (1) of this subsection, and (ii) the appropriate staffing and funds therefor.

(4)(A) With respect to each law making appropriations for the Department for any fiscal year (or any part of a fiscal year), there shall be provided to the Department the funded personnel ceiling defined in subparagraph (C) of this paragraph and the funds appropriated therefor.

(B) In order to carry out the provisions of subparagraph (A) of this paragraph, the Director of the Office of Management and Budget shall, with respect to each such law (i) provide to the Department for the fiscal year (or part of a fiscal year) concerned such funded personnel ceiling and the funds necessary to achieve such ceiling, and (ii) submit to the appropriate committees of the Congress and to the Comptroller General of the United States certification that the Director has so provided such ceiling. Not later than the thirtieth day after the enactment of such a law or, in the event of the enactment of such a law more than thirty days prior to the fiscal year for which such law makes such appropriations, not later than the tenth day of such fiscal year, the certification required in the first sentence of this subparagraph shall be submitted, together with a report containing complete information on the personnel ceiling that the Director has provided to the Department for the employees described in subparagraph (C) of this paragraph.

(C) For the purposes of this paragraph, the term “funded personnel ceiling” means, with respect to any fiscal year (or part of a fiscal year), the authorization by the Director of the Office of Management and Budget to employ (under the appropriation accounts for medical care, medical and prosthetic research, and medical administration and miscellaneous operating expenses) not less than the number of employees for the employment of which appropriations have been made for such fiscal year (or part of a fiscal year).

(5) Notwithstanding any other provision of this title or of any other law, funds appropriated for the Department under the appropriation accounts for medical care, medical and prosthetic research, and medical administration and miscellaneous operating expenses may not be used for, and no employee compensated from such funds may carry out any activity in connection with, the conduct of any study comparing the cost of the provision by private contractors with the cost of the provision by the Department of commercial or industrial products and services for the Veterans Health Administration unless such funds have been specifically appropriated for that purpose.

(6)(A) Temporary research personnel of the Veterans Health Administration shall be excluded from any ceiling on full-time equivalent employees of the Department or any other personnel ceiling otherwise applicable to employees of the Department.

(B) For purposes of subparagraph (A) of this paragraph, the term "temporary research personnel" means personnel who are employed in the Veterans Health Administration in other than a career appointment for work on a research activity and who are not paid by the Department or are paid from funds appropriated to the Department to support such activity.

(b) When the Secretary determines, in accordance with regulations which the Secretary shall prescribe, that a Department facility serves a substantial number of veterans with limited English-speaking ability, the Secretary shall establish and implement procedures, upon the recommendation of the Under Secretary for Health, to ensure the identification of sufficient numbers of individuals on such facility's staff who are fluent in both the language most appropriate to such veterans and in English and whose responsibilities shall include providing guidance to such veterans and to appropriate Department staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

(c)(1) Notwithstanding any other provision of law but except as provided in paragraph (3) of this subsection—

(A) a contract may not be entered into as a result of which an activity at a health-care facility over which the Secretary has direct jurisdiction (hereinafter in this subsection referred to as a "Department health-care facility") would be converted from an activity performed by Federal employees to an activity performed by employees of a contractor of the Government unless the Under Secretary for Health has determined that such activity is not a direct patient care activity or an activity incident to direct patient care; and

(B) in the case of an activity determined by the Under Secretary for Health under clause (A) of this paragraph to be neither such activity, the Secretary, after considering the advice of the Under Secretary for Health and the results of a study described in paragraph (4) of this subsection, may, in the exercise of the Secretary's sole discretion but subject to paragraph (2) of this subsection, enter into a contract as a result of which the activity would be converted from an activity performed by

Federal employees to an activity performed by employees of a contractor of the Government.

(2) The Secretary may enter into a contract under the circumstances described in paragraph (1)(B) of this subsection only if responsive bids are received from at least two responsible, financially autonomous bidders and the Secretary determines—

(A) based on the study described in paragraph (4) of this subsection with respect to the activity involved, that the cost to the Government of the performance of such activity under such a contract over the first five years of such performance (including the cost to the Government of conducting the study) would be lower by 15 percent or more than the cost of performance of such activity by Federal employees; and

(B) that the quantity and quality of health-care services provided to eligible veterans by the Department at the facility at which the activity is carried out would be maintained or enhanced as a result of such a contract.

(3) The provisions of paragraph (1) of this subsection do not apply—

(A) to a contract or agreement under chapter 17 or section 8111, 8111A, or 8153 of this title or under section 1535 of title 31; or

(B) to a contract under section 513 or 7409 of this title if the Under Secretary for Health determines that such contract is necessary in order to provide services to eligible veterans at a Department health-care facility that could not otherwise be provided at such facility.

(4) A study referred to in paragraph (1)(B) of this subsection is a study that—

(A) compares the cost of performing an activity at a Department health-care facility through Federal employees with the cost of performing such activity through a contractor of the Government;

(B) is based on an estimate of the most efficient and cost-effective organization for the effective performance of the activity by Federal employees;

(C) with respect to the costs of performance of such activity through Federal employees, is based (to the maximum extent feasible) on actual cost factors of the Department for pay and retirement and other fringe benefits for the Federal employees who perform the activity; and

(D) takes into account (i) the costs to the Government (including severance pay) that would result from the separation of employees whose Federal employment may be terminated as a result of the Secretary entering into a contract described in paragraph (1)(B) of this subsection, and (ii) all costs to the Government associated with the contracting process.

(5) Prior to conducting a study described in paragraph (4) of this subsection, the Secretary shall (in a timely manner) submit to the appropriate committees of the Congress written notice of a decision to study the activity involved for possible performance by a contractor.

(6) If, after completion of a study described in paragraph (4) of this subsection, a decision is

made to convert performance of the activity involved to contractor performance, the Secretary shall promptly submit to the appropriate committees of the Congress written notice of such decision and a report with respect to such conversion. Each such report shall include—

(A) a summary of the study described in paragraph (4) of this subsection with respect to such contract;

(B) a certification that the study itself is available to such committees and that the results of the study meet the requirements of paragraph (2)(A) of this subsection;

(C) a certification that the requirements of paragraph (2)(B) of this subsection would be met with respect to such contract and a summary of the information that supports such certification;

(D) if more than 25 jobs are affected, information showing the potential economic impact on the Federal employees affected and the potential economic impact on the local community and the Government of contracting for performance of such activity; and

(E) information showing the amount of the bid accepted for a contract for the performance of the activity and the cost of performance of such activity by Federal employees, together with the total estimated cost which the Government will incur because of the contract.

(7) Paragraphs (1) through (6) shall not be in effect during fiscal years 1995 through 1999.

(8) During the period covered by paragraph (7), whenever an activity at a Department health-care facility is converted from performance by Federal employees to performance by employees of a contractor of the Government, the Secretary shall—

(A) require in the contract for the performance of such activity that the contractor, in hiring employees for the performance of the contract, give priority to former employees of the Department who have been displaced by the award of the contract; and

(B) provide to such former employees of the Department all possible assistance in obtaining other Federal employment or entrance into job training and retraining programs.

(9) The Secretary shall include in the Secretary's annual report to Congress under section 529 of this title, for each fiscal year covered by paragraph (7), a report on the use during the year covered by the report of contracting-out authority made available by reason of paragraph (7). The Secretary shall include in each such report a description of each use of such authority, together with the rationale for the use of such authority and the effect of the use of such authority on patient care and on employees of the Department.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 59, §5010; amended Pub. L. 96-151, title III, §301(a), Dec. 20, 1979, 93 Stat. 1095; Pub. L. 97-66, title VI, §601(b), Oct. 17, 1981, 95 Stat. 1033; Pub. L. 97-72, title I, §108, Nov. 3, 1981, 95 Stat. 1053; Pub. L. 97-306, title IV, §409(b), Oct. 14, 1982, 96 Stat. 1446; Pub. L. 97-452, §2(e)(4), Jan. 12, 1983, 96 Stat. 2479; Pub. L. 98-160, title VII, §702(19), Nov. 21, 1983, 97 Stat. 1010; Pub. L.

98-528, title I, §102, Oct. 19, 1984, 98 Stat. 2688; Pub. L. 99-576, title VII, §702(15), Oct. 28, 1986, 100 Stat. 3302; Pub. L. 100-322, title II, §222(a), title IV, §401(a), May 20, 1988, 102 Stat. 531, 543; renumbered §8110 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XI, §1103, title XII, §1201(b)(1), (d)(17), (g)(7), Nov. 2, 1994, 108 Stat. 4681, 4682, 4684, 4687; Pub. L. 104-66, title I, §1141(c), Dec. 21, 1995, 109 Stat. 726.)

#### PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5001(a)(2), (3), (h) of this title prior to the general revision of this subchapter by Pub. L. 96-22.

#### AMENDMENTS

1995—Subsec. (a)(4). Pub. L. 104-66 substituted “subparagraph (C)” for “subparagraph (D)” in subpars. (A) and (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: “Whenever the Director of the Office of Management and Budget is required to submit a certification under subparagraph (B) of this paragraph, the Comptroller General shall submit to the appropriate committees of the Congress a report stating the Comptroller General’s opinion as to whether the Director has complied with the requirements of that subparagraph. The Comptroller General shall submit the report not later than fifteen days after the end of the period specified in such subparagraph for the Director to submit the certification.”

1994—Subsec. (a)(3)(B), (5), (6). Pub. L. 103-446, §1201(b)(1), substituted “Veterans Health Administration” for “Department of Medicine and Surgery” wherever appearing.

Subsec. (c)(3)(B). Pub. L. 103-446, §1201(d)(17), substituted “section 513 or 7409” for “section 213 or 4117”.

Subsec. (c)(7). Pub. L. 103-446, §1201(g)(7), which provided for striking out obsolete or executed provisions and directed the amendment of subsec. (c) by striking out par. (7), was not executed because of the prior amendment of subsec. (c) by Pub. L. 103-446, §1103. See below.

Pub. L. 103-446, §1103, added par. (7) and struck out former par. (7) which read as follows: “Not later than February 1, 1984, and February 1 of each of the five succeeding years, the Secretary shall submit a written report to Congress describing the extent to which activities at Department health-care facilities were performed by contractors during the preceding fiscal year and the actual cost savings resulting from such contracts.”

Subsec. (c)(8), (9). Pub. L. 103-446, §1103, added pars. (8) and (9).

1992—Subsecs. (a)(3), (b), (c)(1), (3)(B). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5010 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “1712” for “612” in par. (2).

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in two places.

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s” wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

Pub. L. 102-40, § 402(d)(1), substituted "8111, 8111A, or 8153" for "5011, 5011A, or 5053" in par. (3)(A).

1988—Subsec. (a)(6). Pub. L. 100-322, § 222(a), added par. (6).

Subsec. (c)(2). Pub. L. 100-322, § 401(a), inserted "responsive bids are received from at least two responsible, financially autonomous bidders and" after "only if".

1986—Subsec. (a)(1). Pub. L. 99-576 substituted "125,000 and not less than 100,000" for "one hundred and twenty-five thousand and not less than one hundred thousand" and "90,000" for "ninety thousand" in two places.

1984—Subsec. (a)(4)(C). Pub. L. 98-528 substituted provision requiring the Comptroller General to submit a report stating the Comptroller General's opinion as to whether the Director has complied with subpar. (B) not later than fifteen days after end of period specified in that subparagraph for Director to submit required certification for provision which had required the Comptroller General to submit a report stating the Comptroller General's opinion as to whether the Director has complied with the requirements of any law making appropriations for the Veterans' Administration for any fiscal year or any part thereof regarding funded personnel ceilings not later than forty-fifth day after enactment of each such law.

1983—Subsec. (a)(1). Pub. L. 97-452 substituted "section 1105 of title 31" for "section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a))".

Subsec. (c)(2)(B). Pub. L. 98-160 substituted "quantity and quality" for "quantity or quality".

1982—Subsec. (c). Pub. L. 97-306 added subsec. (c).

1981—Subsec. (a)(1). Pub. L. 97-72, § 108(a)(1), struck out provision authorizing the Administrator, subject to the approval of the President to establish and operate not less than 125,000 hospital beds in medical facilities over which the Administrator has direct jurisdiction for the care and treatment of eligible veterans and substituted therefor provisions directing the Administrator to establish a total number of hospital beds and nursing home beds in medical facilities over which the Administrator has direct jurisdiction for the care and treatment of eligible veterans at not more than one hundred and twenty-five thousand and not less than one hundred thousand, and provided that the Administrator establish the total number of such beds so as to maintain a contingency capacity to assist the Department of Defense in time of war or national emergency to care for the casualties of such war or national emergency, that of the number of beds authorized pursuant to the preceding sentence, the Administrator operate and maintain a total of not less than ninety thousand hospital beds and nursing home beds and maintain the availability of such additional beds and facilities in addition to the operating bed level as the Administrator considers necessary for such contingency purposes, and that the President include in the Budget transmitted to the Congress for each fiscal year pursuant to section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a)), an amount for medical care and amounts for construction.

Subsec. (a)(3). Pub. L. 97-72, § 108(a)(2), struck out provision requiring that the Chief Medical Director periodically analyze agencywide admission policies and the records of those eligible veterans who apply for hospital care and medical services and annually advise each committee of the results and the added requirements which those results indicate and substituted therefor provisions that the Chief Medical Director, at the end of each fiscal year, (i) analyze agencywide admission policies and the records of those eligible veterans who apply for hospital care, medical services and nursing home care, but are rejected or not immediately admitted or provided such care or services, and (ii) review and made recommendations regarding the adequacy of the established operating bed levels, the geographic distribution of operating beds, the demographic characteristics of the veteran population and the associated need for medical care and nursing home facilities and services in each State, and the proportion of

the total number of operating beds that are hospital beds and that are nursing home beds, and that, after considering the analyses and recommendations of the Chief Medical Director pursuant to subparagraph (A) of this paragraph for any fiscal year, the Administrator report to the committees, on or before December 1 after the close of such fiscal year, on the results of the analysis of the Chief Medical Director and on the required number of beds and the level of treatment capacities required.

Subsec. (a)(4)(A). Pub. L. 97-66, § 601(b)(1)(A), inserted "for any fiscal year (or any part of a fiscal year)" after "With respect to each law making appropriations for the Veterans' Administration".

Subsec. (a)(4)(B). Pub. L. 97-66, § 601(b)(1)(B), inserted "(or part of a fiscal year)" after "provide to the Veterans' Administration for the fiscal year".

Subsec. (a)(4)(D). Pub. L. 97-66, § 601(b)(1)(B), inserted "(or part of a fiscal year)" after "fiscal year" in two places.

Subsec. (a)(5). Pub. L. 97-66, § 601(b)(2), added par. (5).

Subsecs. (b), (c). Pub. L. 97-72, § 108(b), redesignated subsec. (c) as (b). Former subsec. (b), authorizing the Administrator to establish, subject to the approval of the President, not less than twelve thousand beds during fiscal year 1980, and during each fiscal year thereafter, for the furnishing of nursing home care to eligible veterans in facilities over which the Administrator has direct jurisdiction, was struck out.

1979—Subsec. (a)(4). Pub. L. 96-151 added par. (4).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 222(b) of Pub. L. 100-322 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years after fiscal year 1987."

Section 401(b) of Pub. L. 100-322 provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to the awarding of contracts under solicitations issued after the date of the enactment of this Act [May 20, 1988]."

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 601(b)(1) of Pub. L. 97-66 effective Oct. 1, 1981, see section 701(b)(4) of Pub. L. 97-66, set out as a note under section 1114 of this title.

Amendment by section 601(b)(2) of Pub. L. 97-66 effective Oct. 17, 1981, see section 701(b)(1) of Pub. L. 97-66, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Section 301(b) of Pub. L. 96-151 provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to Public Law 96-103 [Nov. 5, 1979, 93 Stat. 771], but, with respect to such Public Law, the certification and report required by subparagraph (B) of paragraph (4) of section 5010 [now 8110] of title 38, United States Code (as added by such amendment), and the report required by subparagraph (C) of such paragraph (as added by such amendment) shall be submitted to the appropriate committees of the Congress not later than January 15, 1980, and February 1, 1980, respectively."

#### CONVERSION OF UNDERUSED SPACE TO DOMICILIARY-CARE BEDS

Section 136 of Pub. L. 100-322 directed Administrator, not later than June 1, 1988, to convert underused space located in facilities under jurisdiction of Administrator in urban areas with significant numbers of homeless veterans into 500 domiciliary-care beds to be used for care of veterans in need of domiciliary care, primarily homeless veterans.

#### POLICY OF COMPREHENSIVE VETERANS' HEALTH-CARE SYSTEM

Section 409(a) of Pub. L. 97-306 provided that: "It is the policy of the United States that the Veterans' Administration—

“(1) shall maintain a comprehensive, nationwide health-care system for the direct provision of quality health-care services to eligible veterans; and

“(2) shall operate such system through cost-effective means that are consistent with carrying out fully the functions of the Department of Medicine and Surgery of the Veterans' Administration under title 38, United States Code.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8103, 8111 of this title.

### § 8111. Sharing of Department and Department of Defense health-care resources

(a) The Secretary and the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy may enter into agreements and contracts for the mutual use or exchange of use of hospital and domiciliary facilities, and such supplies, equipment, material, and other resources as may be needed to operate such facilities properly, except that the Secretary may not enter into an agreement that would result (1) in a permanent reduction in the total number of authorized Department hospital beds and nursing home beds to a level below the minimum number of such beds required by section 8110(a)(1) of this title to be authorized, or (2) in a permanent reduction in the total number of such beds operated and maintained to a level below the minimum number of such beds required by such section to be operated and maintained or in any way subordinate or transfer the operation of the Department to any other agency of the Government.

(b)(1) In order to promote the sharing of health-care resources between the Department and the Department of Defense (hereinafter in this section referred to as the “agencies”), there is established an interagency committee to be known as the Department/Department of Defense Health-Care Resources Sharing Committee (hereinafter in this subsection referred to as the “Committee”).

(2) The Committee shall be composed of—

(A) the Under Secretary for Health and such other officers and employees of the Department as the Under Secretary for Health may designate; and

(B) the Assistant Secretary of Defense for Health Affairs (hereinafter in this section referred to as the “Assistant Secretary”) and such other officers and employees of the Department of Defense as the Assistant Secretary may designate,

except that the size of the Committee shall be mutually determined by the Under Secretary for Health and the Assistant Secretary. During odd-numbered fiscal years, the Under Secretary for Health shall be the chairman of the Committee. During even-numbered fiscal years, the Assistant Secretary shall be the chairman of the Committee. The agencies shall provide administrative support services for the Committee at a level sufficient for the efficient operation of the Committee and shall share the responsibility for the provision of such services on an equitable basis.

(3) In order to enable the Committee to make recommendations under paragraph (4) of this

subsection, the Committee shall on a continuing basis—

(A) review existing policies, procedures, and practices relating to the sharing of health-care resources between the agencies;

(B) identify and assess further opportunities for the sharing of health-care resources between the agencies that would not, in the judgment of the Committee, adversely affect the range of services, the quality of care, or the established priorities for care provided by either agency;

(C) identify changes in policies, procedures, and practices that would, in the judgment of the Committee, promote such sharing of health-care resources between the agencies;

(D) monitor plans of the agencies for the acquisition of additional health-care resources, including the location of new facilities and the acquisition of major equipment, in order to assess the potential impact of such plans on further opportunities for such sharing of health-care resources; and

(E) monitor the implementation of activities designed to promote the sharing of health-care resources between the agencies.

(4) At such times as the Committee considers appropriate, the Committee shall make recommendations to the Secretary or the Secretary of Defense, or both, with respect to (A) changes in policies, procedures, and practices that the Committee has identified under paragraph (3)(C) of this subsection pertaining to the sharing of health-care resources described in such paragraph, and (B) such other matters as the Committee considers appropriate in order to promote such sharing of health-care resources.

(c)(1) After considering the recommendations made under subsection (b)(4) of this section, the Secretary and the Secretary of Defense shall jointly establish guidelines to promote the sharing of health-care resources between the agencies. Guidelines established under this subsection shall provide for such sharing consistent with the health-care responsibilities of the Department under this title and with the health-care responsibilities of the Department of Defense under chapter 55 of title 10 and so as not to adversely affect the range of services, the quality of care, or the established priorities for care provided by either agency.

(2) Guidelines established under paragraph (1) of this subsection shall authorize the heads of individual medical facilities of the agencies to enter into health-care resources sharing agreements in accordance with subsection (d) of this section and shall include guidelines for such agreements.

(d)(1) The head of each medical facility of either agency is authorized to enter into sharing agreements with the heads of medical facilities of the other agency in accordance with guidelines established under subsection (c) of this section. Under any such agreement, an individual who is a primary beneficiary of one agency may be provided health care at a facility of the other agency that is a party to the sharing agreement.

(2) Each such agreement shall identify the health-care resources to be shared.

(3) Each such agreement shall provide, and shall specify procedures designed to ensure, that

the availability of direct health care to individuals who are not primary beneficiaries of the providing agency (A) is on a referral basis from the facility of the other agency, and (B) does not (as determined by the head of the facility of the providing agency) adversely affect the range of services, the quality of care, or the established priorities for care provided to the primary beneficiaries of the providing agency.

(4) Each such agreement shall provide that a providing agency shall be reimbursed for the cost of the health-care resources provided under the agreement and that the rate for such reimbursement shall be determined in accordance with the methodology agreed to pursuant to subsection (e) of this section.

(5) Each proposal for an agreement under paragraph (1) of this subsection shall be submitted to the Under Secretary for Health and the Assistant Secretary and shall be effective as an agreement in accordance with its terms (A) on the forty-sixth day after the receipt of such proposal by both such officials, unless earlier disapproved by either such official, or (B) if earlier approved by both such officials, on the date of such approval.

(e) Reimbursement under any sharing agreement entered into under subsection (d) of this section shall be based upon a methodology that is agreed upon by the Under Secretary for Health and the Assistant Secretary and that provides appropriate flexibility to the heads of the facilities concerned to take into account local conditions and needs and the actual costs to the providing agency's facility of the health-care resources provided. Any funds received through such a reimbursement shall be credited to funds that have been allotted to the facility that provided the care or services.

(f) At the time the President's Budget is transmitted to Congress in any year pursuant to section 1105 of title 31, the Secretary and the Secretary of Defense shall submit a joint report to Congress on the implementation of this section during the fiscal year that ended during the previous calendar year. Each such report shall include—

(1) the guidelines prescribed under subsection (c) of this section (and any revision of such guidelines);

(2) the assessment of further opportunities identified under clause (B) of subsection (b)(3) of this section for sharing of health-care resources between the agencies;

(3) any recommendation made under subsection (b)(4) of this section during such fiscal year;

(4) a review of the sharing agreements entered into under subsection (d) of this section and a summary of activities under such agreements during such fiscal year;

(5) a summary of other planning and activities involving either agency in connection with promoting the coordination and sharing of Federal health-care resources during the preceding fiscal year; and

(6) such recommendations for legislation as the Secretary and the Secretary of Defense consider appropriate to facilitate the sharing of health-care resources between the agencies.

(g) For the purposes of this section:

(1) The term "beneficiary" means a person who is a primary beneficiary of the Department or of the Department of Defense.

(2) The term "direct health care" means health care provided to a beneficiary in a medical facility operated by the Department or the Department of Defense.

(3) The term "head of a medical facility" (A) with respect to a medical facility of the Department, means the director of the facility, and (B) with respect to a medical facility of the Department of Defense, means the medical or dental officer in charge or the contract surgeon in charge.

(4) The term "health-care resource" includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, any other health-care service, and any health-care support or administrative resource.

(5) The term "primary beneficiary" (A) with respect to the Department means a person who is eligible under this title (other than under section 1711(b) or 1713 or subsection (d) of this section) or any other provision of law for care or services in Department medical facilities, and (B) with respect to the Department of Defense, means a member or former member of the Armed Forces who is eligible for care under section 1074 of title 10.

(6) The term "providing agency" means the Department, in the case of care or services furnished by a facility of the Department, and the Department of Defense, in the case of care or services furnished by a facility of the Department of Defense.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 60, §5011; amended Pub. L. 97-174, §3(a), (b)(1), May 4, 1982, 96 Stat. 70, 73; Pub. L. 97-452, §2(e)(4), Jan. 12, 1983, 96 Stat. 2479; renumbered §8111 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(g)(8), (i)(10), Nov. 2, 1994, 108 Stat. 4687, 4688.)

#### PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5003 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

#### AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103-446, §1201(g)(8)(A), in concluding provisions, substituted "During odd-numbered fiscal years" for "During fiscal years 1982 and 1983" and "During even-numbered fiscal years" for "During fiscal year 1984" and struck out after third sentence "Thereafter, the chairmanship of the Committee shall alternate each fiscal year between the Under Secretary for Health and the Assistant Secretary."

Subsec. (b)(4). Pub. L. 103-446, §1201(g)(8)(B), substituted "At such times as" for "Within nine months of the date of the enactment of this subsection and at such times thereafter as".

Subsec. (f)(6). Pub. L. 103-446, §1201(i)(10), inserted "of Defense" after second reference to "Secretary".

1992—Subsecs. (b)(2), (d)(5), (e). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" wherever appearing.

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 5011 of this title as this section.

Pub. L. 102-83, § 4(a)(3), (4), substituted "Sharing of Department" for "Sharing of Veterans' Administration" in section catchline.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Pub. L. 102-40, § 402(d)(1), substituted "8110(a)(1)" for "5010(a)(1)".

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in par. (4).

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing in pars. (1) and (2)(A).

Subsec. (c)(1). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (f). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and in par. (6).

Subsec. (g). Pub. L. 102-83, § 5(c)(1), substituted "1701" for "601" in par. (4) and "1711(b) or 1713" for "611(b) or 613" in par. (5).

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1983—Subsec. (f). Pub. L. 97-452 substituted "section 1105 of title 31" for "section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a))".

1982—Pub. L. 97-174, § 3(b)(1), substituted "Sharing of Veterans' Administration and Department of Defense health-care resources" for "Use of Armed Forces facilities" in section catchline.

Subsec. (a). Pub. L. 97-174, § 3(a)(1), (2), designated existing provisions as subsec. (a) and substituted "material, and other resources as may be needed to operate such facilities properly, except that the Administrator may not enter into an agreement that would result (1) in a permanent reduction in the total number of authorized Veterans' Administration hospital beds and nursing home beds to a level below the minimum number of such beds required by section 5010(a)(1) of this title to be authorized, or (2) in a permanent reduction in the total number of such beds operated and maintained to a level below the minimum number of such beds required by such section to be operated and maintained" for "and material as may be needed to operate such facilities properly, or for the transfer, without reimbursement of appropriations, of facilities, supplies, equipment, or material necessary and proper for authorized care for veterans, except that at no time shall the Administrator enter into any agreement which will result in a permanent reduction of Veterans' Administration hospital and domiciliary beds below the number established or approved on June 22, 1944, plus the estimated number required to meet the load of eligibles under this title,".

Subsecs. (b) to (g). Pub. L. 97-174, § 3(a)(3), added subsecs. (b) to (g).

#### HEALTH-CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE

Pub. L. 102-585, title II, Nov. 4, 1992, 106 Stat. 4949, as amended by Pub. L. 103-446, title XII, § 1202(e)(1), Nov. 2, 1994, 108 Stat. 4689, provided that:

#### "SEC. 201. TEMPORARY EXPANSION OF AUTHORITY FOR SHARING AGREEMENTS.

"The Secretary of Veterans Affairs may enter into an agreement with the Secretary of Defense under this section to expand the availability of health-care sharing arrangements with the Department of Defense under section 8111(c) of title 38, United States Code. Under such an agreement—

"(1) the head of a Department of Veterans Affairs medical facility may enter into agreements under section 8111(d) of that title with (A) the head of a De-

partment of Defense medical facility, (B) with any other official of the Department of Defense responsible for the provision of care under chapter 55 of title 10, United States Code, to persons who are covered beneficiaries under that chapter, in the region of the Department of Veterans Affairs medical facility, or (C) with a contractor of the Department of Defense responsible for the provision of care under chapter 55 of title 10, United States Code, to persons who are covered beneficiaries under that chapter, in the region of the Department of Veterans Affairs medical facility; and

"(2) the term 'primary beneficiary' shall be treated as including—

"(A) with respect to the Department of Veterans Affairs, any person who is described in section 1713 of title 38, United States Code; and

"(B) with respect to the Department of Defense, any person who is a covered beneficiary under chapter 55 of title 10, United States Code.

#### "SEC. 202. REQUIREMENT FOR IMPROVEMENT IN SERVICES FOR VETERANS.

"A proposed agreement authorized by section 201 that is entered into by the head of a Department of Veterans Affairs medical facility may take effect only if the Under Secretary for Health of the Department of Veterans Affairs finds, and certifies to the Secretary of Veterans Affairs, that implementation of the agreement—

"(1) will result in the improvement of services to eligible veterans at that facility; and

"(2) will not result in the denial of, or a delay in providing, access to care for any veteran at that facility.

#### "SEC. 203. EXPANDED SHARING AGREEMENTS WITH DEPARTMENT OF DEFENSE.

"Under an agreement under section 201, guidelines under section 8111(b) of title 38, United States Code, may be modified to provide that, notwithstanding any other provision of law, any person who is a covered beneficiary under chapter 55 of title 10 and who is furnished care or services by a facility of the Department of Veterans Affairs under an agreement entered into under section 8111 of that title, or who is described in section 1713 of title 38, United States Code, and who is furnished care or services by a facility of the Department of Defense, may be authorized to receive such care or services—

"(1) without regard to any otherwise applicable requirement for the payment of a copayment or deductible; or

"(2) subject to a requirement to pay only part of any such otherwise applicable copayment or deductible, as specified in the guidelines.

#### "SEC. 204. EXPIRATION OF AUTHORITY.

"The authority to provide services pursuant to agreements entered into under section 201 expires on October 1, 1996.

#### "SEC. 205. CONSULTATION WITH VETERANS SERVICE ORGANIZATIONS.

"In carrying out this title, the Secretary of Veterans Affairs shall consult with organizations named in or approved under section 5902 of title 38, United States Code.

#### "SEC. 206. ANNUAL REPORT.

"(a) IN GENERAL.—For each of fiscal years 1993 through 1996, the Secretary of Defense and the Secretary of Veterans Affairs shall include in the annual report of the Secretaries under section 8111(f) of title 38, United States Code, a description of the Secretaries' implementation of this section.

"(b) ADDITIONAL MATTERS FOR FISCAL YEAR 1996 REPORT.—In the report under subsection (a) for fiscal year 1996, the Secretaries shall include the following:

"(1) An assessment of the effect of agreements entered into under section 201 on the delivery of health care to eligible veterans.

"(2) An assessment of the cost savings, if any, associated with provision of services under such agree-

ments to retired members of the Armed Forces, dependents of members or former members of a uniformed service, and beneficiaries under section 1713 of title 38, United States Code.

“(3) Any plans for administrative action, and any recommendations for legislation, that the Secretaries consider appropriate to include in the report.”

#### CONGRESSIONAL FINDINGS

Section 2(a) of Pub. L. 97-174 provided that: “The Congress makes the following findings:

“(1) There are opportunities for greater sharing of the health-care resources of the Veterans' Administration and the Department of Defense which would, if achieved, be beneficial to both veterans and members of the Armed Forces and could result in reduced costs to the Government by minimizing duplication and underuse of health-care resources.

“(2) Present incentives to encourage such sharing of health-care resources are inadequate.

“(3) Such sharing of health-care resources can be achieved without a detrimental effect on the primary health-care beneficiaries of the Veterans' Administration and the Department of Defense.”

#### REGULAR CONSULTATIONS OF ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS WITH SURGEONS GENERAL OF ARMY, NAVY, AND AIR FORCE

Section 3(c) of Pub. L. 97-174 provided that: “The Assistant Secretary of Defense for Health Affairs shall consult regularly with the Surgeons General of the Army, Navy, and Air Force in carrying out the duties and functions assigned to the Assistant Secretary in section 5011 [now 8111] of title 38, United States Code, as amended by subsection (a) of this section.”

#### GUIDELINES TO PROMOTE SHARING OF HEALTH-CARE RESOURCES; INITIAL ESTABLISHMENT

Section 3(d) of Pub. L. 97-174 provided that: “The guidelines required to be established under subsection (c) of section 5011 [now 8111] of title 38, United States Code, as added by subsection (a) of this section, shall initially be established not later than twelve months after the date of the enactment of this Act [May 4, 1982].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8102, 8104, 8110 of this title; title 10 sections 1104, 2641.

### § 8111A. Furnishing of health-care services to members of the Armed Forces during a war or national emergency

(a)(1) During and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces in armed conflict, the Secretary may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty. The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of veterans with service-connected disabilities.

(2) For the purposes of this section, the terms “hospital care”, “nursing home care”, and “medical services” have the meanings given such terms by sections 1701(5), 101(28), and 1701(6) of this title, respectively.

(b)(1) During a period in which the Secretary is authorized to furnish care and services to members of the Armed Forces under subsection

(a) of this section, the Secretary, to the extent authorized by the President and subject to the availability of appropriations or reimbursements under subsection (c) of this section, may enter into contracts with private facilities for the provision during such period by such facilities of hospital care and medical services described in paragraph (2) of this subsection.

(2) Hospital care and medical services referred to in paragraph (1) of this subsection are—

(A) hospital care and medical services authorized under this title for a veteran and necessary for the care or treatment of a condition for which the veteran is receiving medical services at a Department facility under subsection (f) of section 1712 of this title, in a case in which the delay involved in furnishing such care or services at such Department facility or at any other Department facility reasonably accessible to the veteran would, in the judgment of the Under Secretary for Health, be likely to result in a deterioration of such condition; and

(B) hospital care for a veteran who—

(i) is receiving hospital care under section 1710 of this title; or

(ii) is eligible for hospital care under such section and requires such care in a medical emergency that poses a serious threat to the life or health of the veteran;

if Department facilities are not capable of furnishing or continuing to furnish the care required because of the furnishing of care and services to members of the Armed Forces under subsection (a) of this section.

(c)(1) The cost of any care or services provided by the Department under subsection (a) of this section shall be reimbursed to the Department by the Department of Defense at such rates as may be agreed upon by the Secretary and the Secretary of Defense based on the cost of the care or services provided.

(2) Amounts received under this subsection shall be credited to funds allotted to the Department facility that provided the care or services.

(d)(1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly review plans for the implementation of this section not less often than annually.

(2) Whenever a modification to such plans is agreed to, the Secretaries shall jointly submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on such modification. Any such report shall be submitted within 30 days after the modification is agreed to.

(e) The Secretary shall prescribe regulations to govern any exercise of the authority of the Secretary under subsections (a) and (b) of this section and of the Under Secretary for Health under subsection (b)(2)(A) of this section.

(f) Within thirty days after a declaration of a period of war or national emergency described in subsection (a) of this section (or as soon after the end of such thirty-day period as is reasonably practicable), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's allocation of facilities and personnel in order to provide priority hospital care, nurs-



ing home care, and medical services under this section to members of the Armed Forces. Thereafter, with respect to any fiscal year in which the authority in subsection (b) of this section to enter into contracts with private facilities has been used, the Secretary shall report within ninety days after the end of such fiscal year to those committees regarding the extent of, and the circumstances under which, such authority was used.

(Added Pub. L. 97-174, §4(a), May 4, 1982, 96 Stat. 74, §5011A; renumbered §8111A, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, §14(f)(4), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §§4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### AMENDMENTS

1992—Subsecs. (b)(2)(A), (e). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

1991—Pub. L. 102-40 renumbered section 5011A of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “1701(5)” for “601(5)” and “1701(6)” for “601(6)” in par. (2).

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places in par. (1).

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in par. (1).

Subsec. (b). Pub. L. 102-83, §5(c)(1), substituted “1712” for “612” in par. (2)(A) and “1710” for “610” in par. (2)(B)(i).

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places in par. (1).

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing in par. (2).

Pub. L. 102-54, §14(f)(4)(A), amended subsec. (b)(2)(A) as in effect immediately before the enactment of Pub. L. 102-40 by striking out “or (g)” after “subsection (f)”.

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in par. (1).

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

Subsec. (d). Pub. L. 102-54, §14(f)(4)(B), amended section as in effect immediately before the enactment of Pub. L. 102-40 by adding subsec. (d) and striking out former subsec. (d) which read as follows:

“(1) Not later than six months after the date of the enactment of this section, the Administrator and the Secretary of Defense shall enter into an agreement to plan and establish procedures and guidelines for the implementation of this section. Not later than one year after the date of the enactment of this section, the Administrator and the Secretary shall complete plans for such implementation and shall submit such plans to the Committees on Veterans’ Affairs and on Armed Services of the Senate and House of Representatives.

“(2) The Administrator and the Secretary of Defense shall jointly review such plans not less often than annually thereafter and shall report to such committees any modification in such plans within thirty days after the modification is agreed to.”

Subsecs. (e), (f). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s” wherever appearing.

#### CONGRESSIONAL FINDINGS

Section 2(b) of Pub. L. 97-174 provided that: “The Congress makes the following further findings:

“(1) During and immediately after a period of war or national emergency involving the use of the Armed Forces of the United States in armed conflict, the Department of Defense might not have adequate

health-care resources to care for military personnel wounded in combat and other active-duty military personnel.

“(2) The Veterans’ Administration has an extensive, comprehensive health-care system that could be used to assist the Department of Defense in caring for such personnel in such a situation.”

#### EX. ORD. NO. 12751. HEALTH CARE SERVICES FOR OPERATION DESERT STORM

Ex. Ord. No. 12751, Feb. 14, 1991, 56 F.R. 6787, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5011A [now 8111A] of title 38 of the United States Code, and pursuant to the national emergency declared with respect to Iraq in Executive Order No. 12722 of August 2, 1990 [50 U.S.C. 1701 note], it is hereby ordered that, in the event that the Department of Veterans Affairs is requested by the Department of Defense to furnish care and services to members of the United States Armed Forces on active duty in Operation Desert Storm, the Secretary of Veterans Affairs may, pursuant to this order, enter into contracts with private facilities for the provision of hospital care and medical services for veterans to the fullest extent authorized by section 5011A(b)(1)–(2) [now 8111A(b)(1)–(2)] of title 38 of the United States Code.

GEORGE BUSH.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1721, 8110 of this title; title 10 section 1104.

### § 8112. Partial relinquishment of legislative jurisdiction

The Secretary, on behalf of the United States, may relinquish to the State in which any lands or interests therein under the supervision or control of the Secretary are situated, such measure of legislative jurisdiction over such lands or interests as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of legislative jurisdiction shall be initiated by filing a notice thereof with the Governor of the State concerned, or in such other manner as may be prescribed by the laws of such State, and shall take effect upon acceptance by such State.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 60, §5012; renumbered §8112, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5007 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5012 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places.

### § 8113. Property formerly owned by National Home for Disabled Volunteer Soldiers

If by reason of any defeasance or conditional clause or clauses contained in any deed of conveyance of property to the National Home for Disabled Volunteer Soldiers, which property is

owned by the United States, the full and complete enjoyment and use of such property is threatened, the Attorney General, upon request of the President, shall institute in the United States district court for the district in which the property is located such proceedings as may be proper to extinguish all outstanding adverse interests. The Attorney General may procure and accept, on behalf of the United States, by gift, purchase, cession, or otherwise, absolute title to, and complete jurisdiction over, all such property.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 61, §5013; renumbered §8113, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

#### PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5006 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5013 of this title as this section.

### § 8114. Use of federally owned facilities; use of personnel

(a) The Secretary, subject to the approval of the President, may use as medical facilities such suitable buildings, structures, and grounds owned by the United States on March 3, 1925, as may be available for such purposes, and the President may by Executive order transfer any such buildings, structures, and grounds to the control and jurisdiction of the Department upon the request of the Secretary.

(b) The President may require the architectural, engineering, constructing, or other forces of any of the departments of the Government to do or assist in the construction and alteration of medical facilities, and the President may employ for such purposes individuals and agencies not connected with the Government, if in the opinion of the President such is desirable, at such compensation as the President may consider reasonable.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 61, §5014; renumbered §8114, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 5001(e) of this title prior to the general revision of this subchapter by Pub. L. 96-22.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5014 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 421c.

### § 8115. Acceptance of certain property

The President may accept from any State or other political subdivision, or from any person,

any building, structure, equipment, or grounds suitable for the care of disabled persons, with due regard to fire or other hazards, state of repair, and all other pertinent considerations. The President may designate which agency of the Federal Government shall have the control and management of any property so accepted.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 61, §5015; renumbered §8115, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

#### PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5005 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5015 of this title as this section.

### § 8116. Nursing home revolving fund

(a)(1) Amounts realized from a transfer pursuant to section 8122(a)(2)(C) of this title shall be administered as a revolving fund and shall be available without fiscal year limitation.

(2) The revolving fund shall be deposited in a checking account with the Treasurer of the United States.

(b)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, and acquisition (including site acquisition) of nursing home facilities and may be made only as provided for in appropriation Acts.

(2) For the purpose of section 8104(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund may be expended for a project involving a total expenditure of more than \$2,000,000 for the construction, alteration, or acquisition (including site acquisition) of a nursing home facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.

(Added Pub. L. 100-322, title II, §205(a), May 20, 1988, 102 Stat. 512, §5016; renumbered §8116 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

#### AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5016 of this title as this section.

Pub. L. 102-40, §402(d)(1), substituted "8122(a)(2)(C)" for "5022(a)(2)(C)" in subsec. (a)(1) and "8104(a)(2)" for "5004(a)(2)" in subsec. (b)(2).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8122, 8165 of this title.

## SUBCHAPTER II—PROCUREMENT AND SUPPLY

### § 8121. Revolving supply fund

(a) The revolving supply fund established for the operation and maintenance of a supply system for the Department (including procurement of supplies, equipment, and personal services and the repair and reclamation of used, spent, or excess personal property) shall be—

(1) available without fiscal year limitations for all expenses necessary for the operation and maintenance of such supply system;

(2) reimbursed from appropriations for the cost of all services, equipment, and supplies furnished, at rates determined by the Secretary on the basis of estimated or actual direct cost (which may be based on the cost of recent significant purchases of the equipment or supply item involved) and indirect cost; and

(3) credited with advances from appropriations for activities to which services or supplies are to be furnished, and all other receipts resulting from the operation of the fund, including property returned to the supply system when no longer required by activities to which it had been furnished, the proceeds of disposal of scrap, excess or surplus personal property of the fund, and receipts from carriers and others for loss of or damage to personal property.

At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Secretary determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund.

(b) An adequate system of accounts for the fund shall be maintained on the accrual method, and financial reports prepared on the basis of such accounts. An annual business type budget shall be prepared for operations under the fund.

(c) The Secretary is authorized to capitalize, at fair and reasonable values as determined by the Secretary, all supplies and materials and depot stocks of equipment on hand or on order.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1253, § 5011; amended Pub. L. 87-314, Sept. 26, 1961, 75 Stat. 675; Pub. L. 94-581, title II, § 210(e)(6), Oct. 21, 1976, 90 Stat. 2865; renumbered § 5021, Pub. L. 96-22, title III, § 301(b)(1), June 13, 1979, 93 Stat. 61; Pub. L. 96-330, title IV, § 402(a), Aug. 26, 1980, 94 Stat. 1051; renumbered § 8121, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5021 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in par. (2) and in last sentence.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in introductory provisions.

Subsec. (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

1980—Subsec. (a). Pub. L. 96-330 substituted “actual direct cost (which may be based on the cost of recent significant purchases of the equipment or supply item involved)” for “actual direct” in par. (2), and, in provisions following par. (3), substituted “At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Administrator determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund” for “At the end of each fiscal year, any net income of the fund, after making provision for prior losses, shall be covered

into the Treasury of the United States as miscellaneous receipts”.

1976—Subsec. (c). Pub. L. 94-581 substituted “the Administrator” for “him”.

1961—Subsec. (a). Pub. L. 87-314 included among the purposes for which the supply fund was established, the repair and reclamation of used, spent, or excess personal property, and authorized the crediting of the fund with property returned to the supply system when no longer required by activities to which it had been furnished.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Section 402(b) of Pub. L. 96-330 provided that: “The amendments made by subsection (a) [amending this section] shall take effect as of October 1, 1979.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1732 of this title.

### § 8122. Authority to procure and dispose of property and to negotiate for common services

(a)(1) The Secretary may lease for a term not exceeding three years lands or buildings, or parts or parcels thereof, belonging to the United States and under the Secretary’s control. Any lease made pursuant to this subsection to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Notwithstanding section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), or any other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, ore restoration, or the lessee, of the property leased, as a part or all of the consideration for the lease. Prior to the execution of any such lease, the Secretary shall give appropriate public notice of the Secretary’s intention to do so in the newspaper of the community in which the lands or buildings to be leased are located. The proceeds from such leases, less expenses for maintenance, operation, and repair of buildings leased for living quarters, shall be covered into the Treasury of the United States as miscellaneous receipts.

(2)(A) Except as provided in paragraph (3) of this subsection, the Secretary may not during any fiscal year transfer to another Federal agency or to a State (or any political subdivision of a State) any interest in real property described in subparagraph (B) of this paragraph unless (i) the transfer (as proposed) was described in the budget for that fiscal year submitted to Congress pursuant to section 1105 of title 31, and (ii) the Department receives compensation equal to the fair market value of the property.

(B) An interest in real property described in this subparagraph is an interest in real property that is owned by the United States and administered by the Secretary and that has an estimated value in excess of \$50,000.

(C) Amounts realized from the transfer of any interest in real property described in subparagraph (B) of this paragraph shall be deposited in the nursing home revolving fund established under section 8116 of this title.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary may, without regard

to paragraph (2) of this subsection or any other provision of law relating to the disposition of real property by the United States, transfer to a State for use as the site of a State nursing-home or domiciliary facility real property described in subparagraph (E) of this paragraph which the Secretary determines to be excess to the needs of the Department.

(B) A transfer of real property may not be made under this paragraph unless—

(i) the Secretary has determined that the State has provided sufficient assurance that it has the resources (including any resources which are reasonably likely to be available to the State under subchapter III of chapter 81 of this title and section 1741 of this title) necessary to construct and operate a State home nursing or domiciliary care facility; and

(ii) the transfer is made subject to the conditions (I) that the property be used by the State for a nursing-home or domiciliary care facility in accordance with the conditions and limitations applicable to State home facilities constructed with assistance under subchapter III of chapter 81 of this title, and (II) that, if the property is used at any time for any other purpose, all right, title, and interest in and to the property shall revert to the United States.

(C) A transfer of real property may not be made under this paragraph until—

(i) the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives, not later than June 1 of the year in which the transfer is proposed to be made (or the year preceding that year), a report providing notice of the proposed transfer; and

(ii) a period of 90 consecutive days elapses after the report is received by those committees.

(D) A transfer under this paragraph shall be made under such additional terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(E) Real property described in this subparagraph is real property that is owned by the United States and administered by the Secretary.

(b) The Secretary may, for the purpose of extending benefits to veterans and dependents, and to the extent the Secretary deems necessary, procure the necessary space for administrative purposes by lease, purchase, or construction of buildings, or by condemnation or declaration of taking, pursuant to law.

(c) The Secretary may procure laundry services, and other common services as specifically approved by the Secretary from nonprofit, tax-exempt educational, medical or community institutions, without regard to the requirements of section 302(c)<sup>1</sup> of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c)), whenever such services are not reasonably available from private commercial sources. Notwithstanding this exclusion, the provisions of section 304 of that Act (41 U.S.C.

254) shall apply to procurement authorized by this subsection.

(d) Real property under the jurisdiction of the Secretary may not be declared excess by the Secretary and disposed of by the General Services Administration or any other entity of the Federal Government unless the Secretary determines that the property is no longer needed by the Department in carrying out its functions.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1253, § 5012; amended Pub. L. 89-785, title II, § 202(a), (b), Nov. 7, 1966, 80 Stat. 1373; Pub. L. 93-82, title III, § 302(2), Aug. 2, 1973, 87 Stat. 195; Pub. L. 94-581, title II, § 210(e)(7), Oct. 21, 1976, 90 Stat. 2865; renumbered § 5022 and amended Pub. L. 96-22, title III, § 301(b), June 13, 1979, 93 Stat. 61; Pub. L. 96-330, title IV, § 403(a), Aug. 26, 1980, 94 Stat. 1052; Pub. L. 97-295, § 4(91), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-160, title IV, § 401, Nov. 21, 1983, 97 Stat. 1004; Pub. L. 100-322, title IV, § 421(a)(1), May 20, 1988, 102 Stat. 552; Pub. L. 100-687, div. B, title XV, § 1505, Nov. 18, 1988, 102 Stat. 4135; renumbered § 8122 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, § 14(f)(5), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, §§ 4(a)(1), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406.)

#### REFERENCES IN TEXT

Subsection (c) of section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)), referred to in subsec. (c), was struck out by section 2714(a)(1)(B) of Pub. L. 98-369 and the provisions formerly contained in subsec. (e) were restated in subsec. (c)(1) of section 302 of the 1949 Act.

#### AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 5022 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 5(c)(1), substituted “1741” for “641” in par. (3)(B)(i).

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s” wherever appearing.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in pars. (2)(A) and (3)(A).

Pub. L. 102-83, § 4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration” in pars. (2)(B) and (3)(E).

Pub. L. 102-54 amended subsec. (a)(3)(A) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “State” for “State home” before “nursing-home” and “this paragraph” for “the paragraph” before “which”.

Pub. L. 102-40, § 402(d)(1), substituted “8116” for “5016” in par. (2)(C).

Subsecs. (b), (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (d). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

1988—Subsec. (a)(2). Pub. L. 100-687, § 1505(1), substituted “Except as provided in paragraph (3) of this subsection, the” for “The” at beginning.

Pub. L. 100-322 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(A) Before entering into a transaction described in subparagraph (B) of this paragraph with respect to any real property owned by the United States and administered by the Veterans’ Administration which has an estimated value in excess of \$50,000, the Administrator shall submit a report of the facts concerning the pro-

<sup>1</sup> See References in Text note below.

posed transaction to the Committees on Veterans' Affairs of the Senate and House of Representatives, and such transaction may not then be entered into until after the expiration of 180 days from the date upon which the report is submitted.

“(B) Subparagraph (A) of this paragraph applies to (i) any transfer of an interest in real property to another Federal agency or to a State (or any political subdivision of a State), and (ii) any report to a Federal disposal agency of excess real property.

“(C) A statement in an instrument of conveyance, including a lease, that the requirements of this paragraph have been met, or that the conveyance is not subject to this paragraph, is conclusive for the purposes of all matters pertaining to the ownership of any right or interest in the property conveyed by such instrument.”

Subsec. (a)(3). Pub. L. 100-687, §1505(2), added par. (3). 1983—Subsec. (a)(2)(A). Pub. L. 98-160, §401(1), substituted “180 days” for “30 days”.

Subsec. (d). Pub. L. 98-160, §401(2), added subsec. (d). 1982—Subsec. (a). Pub. L. 97-295, §4(91)(A), substituted “of” for “entitled ‘An Act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933, and for other purposes,’ approved” after “section 321 of the Act”.

Subsec. (c). Pub. L. 97-295, §4(91)(B), inserted “(41 U.S.C. 254)” after “section 304 of that Act”.

1980—Subsec. (a). Pub. L. 96-330 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (b). Pub. L. 96-22 substituted “necessary space for administrative purposes by lease” for “necessary space for administrative, clinical, medical, and outpatient treatment purposes by lease”.

1976—Subsec. (a). Pub. L. 94-581, §210(e)(7)(A), substituted “under the Administrator's control” for “under his control” and “notice of the Administrator's intention” for “notice of his intention”.

Subsec. (b). Pub. L. 94-581, §210(e)(7)(B), substituted “the Administrator” for “he”.

Subsec. (c). Pub. L. 94-581, §210(e)(7)(C), substituted “the Administrator” for “him”.

1973—Subsec. (a). Pub. L. 93-82 inserted provisions that leases under this subsection may be made without regard to section 5 of title 41, that notwithstanding section 303b of title 40 or any other provision of law, such leases may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease and that prior to the execution of the leases, the Administrator shall give notice of his intention in the local newspaper.

1966—Pub. L. 89-785 inserted “and to negotiate for common services” in section catchline and added subsec. (c).

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-22 effective Oct. 1, 1979, except that the amendment shall not apply with respect to the acquisition, construction, or alteration of any medical facilities if the acquisition, construction, or alteration (not including exchange) was approved by the President before Oct. 1, 1979, see section 302 of Pub. L. 96-22, set out as an Effective Date note under section 8101 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

#### TRANSFER OF REAL PROPERTY DEEMED DESCRIBED IN BUDGET FOR FISCAL YEAR 1989

Section 421(a)(2) of Pub. L. 100-322 provided that any proposed transfer of real property described in subsec.

(a)(2)(B) of this section that was described in a report submitted to Committees on Veterans' Affairs of Senate and House of Representatives by Administrator not later than 30 days after May 20, 1988, was to be deemed for purposes of subsec. (a)(2)(A) of this section to have been described in the President's budget for fiscal year 1989.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8116, 8162, 8164, 8201 of this title; title 36 section 493.

### § 8123. Procurement of prosthetic appliances

The Secretary may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the Secretary may determine to be proper, without regard to any other provision of law.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1254, §5013; amended Pub. L. 94-581, title II, §210(e)(8), Oct. 21, 1976, 90 Stat. 2865; renumbered §5023, Pub. L. 96-22, title III, §301(b)(1), June 13, 1979, 93 Stat. 61; renumbered §8123, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5023 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places.

1976—Pub. L. 94-581 substituted “the Administrator” for “he”.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

### § 8124. Grant of easements in Government-owned lands

The Secretary, whenever the Secretary deems it advantageous to the Government and upon such terms and conditions as the Secretary deems advisable, may grant on behalf of the United States to any State, or any agency or political subdivision thereof, or to any public-service company, easements in and rights-of-way over lands belonging to the United States which are under the Secretary's supervision and control. Such grant may include the use of such easements or rights-of-way by public utilities to the extent authorized and under the conditions imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the Secretary deems necessary or desirable, is hereby ceded to the State in which the land is located. The Secretary may accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as the Secretary may deem necessary or desirable over the land so acquired. Any such easement or right-of-way shall be terminated upon abandonment or nonuse of the same and all right, title, and interest in the land covered thereby shall thereupon revert to the United States or its assignee.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1254, § 5014; amended Pub. L. 94-581, title II, § 210(e)(9), Oct. 21, 1976, 90 Stat. 2865; renumbered § 5024, Pub. L. 96-22, title III, § 301(b)(1), June 13, 1979, 93 Stat. 61; renumbered § 8124, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5024 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing and "Secretary's" for "Administrator's".

1976—Pub. L. 94-581 substituted "the Administrator" for "he" wherever appearing and "under the Administrator's supervision" for "under his supervision".

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 421c.

### § 8125. Procurement of health-care items

(a) Except as provided in subsections (b) and (c) of this section, the Secretary may not procure health-care items under local contracts.

(b)(1) A health-care item for use by the Department may be procured under a local contract if—

(A) the procurement is within the limits prescribed in paragraph (3) of this subsection; and  
(B)(i) the item is not otherwise available to the Department medical center concerned,

(ii) procurement of the item by a local contract is necessary for the effective furnishing of health-care services or the conduct of a research or education program at a Department medical center, as determined by the director of the center in accordance with regulations which the Under Secretary for Health shall prescribe, or

(iii) procurement under a local contract is demonstrably more cost-effective for the item.

(2) In the case of the need for an emergency procurement of a health-care item, such item may be procured under a local contract, but no greater quantity of such item may be procured by a local contract than is reasonably necessary to meet the emergency need and the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

(3)(A) Except as provided in subparagraphs (C) and (D) of this paragraph, not more than 20 percent of the total of all health-care items procured by the Department in any fiscal year (measured as a percent of the total cost of all such health-care items procured by the Department in that fiscal year) may be procured under local contracts.

(B) Local contracts for the procurement of health-care items shall, to the maximum extent feasible, be awarded to regular dealers or manufacturers engaged in the wholesale supply of such items.

(C) The Secretary may increase for a fiscal year the percentage specified in subparagraph

(A) of this section to a percentage not greater than 30 percent if the Secretary, based on the experience of the Department during the two fiscal years preceding such fiscal year, determines that the increase and the amount of the increase are necessary in the interest of the effective furnishing of health-care services by the Department. The authority to increase such percentage may not be delegated.

(D) Items procured through an emergency procurement shall not be counted for the purpose of this paragraph.

(c) A provision of law that is inconsistent with subsection (a) or (b) of this section shall not apply, to the extent of the inconsistency, to the procurement of a health-care item for use by the Department.

(d)(1) Not later than December 1 of each year (beginning in 1992), the director of each Department medical center shall transmit to the Secretary a report containing a list indicating the quantity of each health-care item procured at that medical center under a local contract during the preceding fiscal year and the total amount paid for such item during such fiscal year.

(2) Not later than February 1 of each year (beginning in 1993), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out this section during the preceding fiscal year.

(3) Not later than February 1 of each year from 1989 through 1992, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out this section during the preceding fiscal year. The first such report shall contain information showing the percentage (measured by cost) of the total of all health-care items procured by the Department during fiscal year 1988 that were procured through local contracts. The other reports under this paragraph shall contain information showing the percentage (measured by cost) of the total of all health-care items procured by the Department, and by each Department medical center, during the fiscal year covered by the report that were purchased through local contracts and, in the case of each medical center at which the percentage was greater than 20 percent, an explanation of the reasons why that occurred.

(e) For the purposes of this section:

(1) The term "health-care item" includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65 or 66. Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73. Such term does not include perishable items.

(2) The term "local contract" means a contract entered into by a Department medical center for procurement of an item for use by that medical center.

(3) The term "emergency procurement" means a procurement necessary to meet an emergency need, affecting the health or safety

of a person being furnished health-care services by the Department, for an item.

(Added Pub. L. 100-322, title IV, § 403(a)(1), May 20, 1988, 102 Stat. 543, § 5025; amended Pub. L. 100-687, div. B, title XV, § 1507(b), (c), Nov. 18, 1988, 102 Stat. 4136, 4137; renumbered § 8125, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### AMENDMENTS

1992—Subsec. (b)(1)(B)(ii). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

1991—Pub. L. 102-40 renumbered section 5025 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places in par. (3)(C).

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

Subsec. (c). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Subsecs. (d), (e). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

1988—Subsec. (d)(1). Pub. L. 100-687, § 1507(b)(1), inserted “(beginning in 1992)” after “of each year”.

Subsec. (d)(2). Pub. L. 100-687, § 1507(b)(2), inserted “(beginning in 1993)” after “of each year”.

Subsec. (d)(3). Pub. L. 100-687, § 1507(b)(3), added par. (3).

Subsec. (e)(1). Pub. L. 100-687, § 1507(c), substituted “65 or 66” for “65, 66, or 73” and inserted after first sentence “Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Administrator) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73.”

#### EFFECTIVE DATE

Section 403(b) of Pub. L. 100-322, as amended by Pub. L. 100-687, div. B, title XV, § 1507(a), Nov. 18, 1988, 102 Stat. 4136, provided that:

“(1) Subsections (a), (b)(1), and (b)(2) of section 5025 [now 8125] of title 38, United States Code (as added by subsection (a)), shall take effect one year after the date of the enactment of this Act [May 20, 1988].

“(2) Subsection (b)(3) of such section shall apply to health-care items procured for use by the Veterans’ Administration [now Department of Veterans Affairs] after September 30, 1990.”

#### STANDARDIZATION OF MEDICAL AND PHARMACEUTICAL ITEMS

Section 402 of Pub. L. 100-322, as amended by Pub. L. 100-687, div. B, title XV, § 1508, Nov. 18, 1988, 102 Stat. 4137, directed Administrator, not later than Oct. 1, 1989, to develop and fully implement an agency-wide plan for cost-effective standardization of health-care items procured by Veterans’ Administration.

#### § 8126. Limitation on prices of drugs procured by Department and certain other Federal agencies

(a) Each manufacturer of covered drugs shall enter into a master agreement with the Secretary under which—

(1) beginning January 1, 1993, the manufacturer shall make available for procurement on the Federal Supply Schedule of the General

Services Administration each covered drug of the manufacturer;

(2) with respect to each covered drug of the manufacturer procured by a Federal agency described in subsection (b) on or after January 1, 1993, that is purchased under depot contracting systems or listed on the Federal Supply Schedule, the manufacturer has entered into and has in effect a pharmaceutical pricing agreement with the Secretary (or the Federal agency involved, if the Secretary delegates to the Federal agency the authority to enter into such a pharmaceutical pricing agreement) under which the price charged during the one-year period beginning on the date on which the agreement takes effect may not exceed 76 percent of the non-Federal average manufacturer price (less the amount of any additional discount required under subsection (c)) during the one-year period ending one month before such date (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period are not available, during such period as the Secretary considers appropriate), except that such price may nominally exceed such amount if found by the Secretary to be in the best interests of the Department or such Federal agencies;

(3) with respect to each covered drug of the manufacturer procured by a State home receiving funds under section 1741 of this title, the price charged may not exceed the price charged under the Federal Supply Schedule at the time the drug is procured; and

(4) unless the manufacturer meets the requirements of paragraphs (1), (2), and (3), the manufacturer may not receive payment for the purchase of drugs or biologicals from—

(A) a State plan under title XIX of the Social Security Act, except as authorized under section 1927(a)(3) of such Act,

(B) any Federal agency described in subsection (b), or

(C) any entity that receives funds under the Public Health Service Act.

(b) The Federal agencies described in this subsection are as follows:

(1) The Department.

(2) The Department of Defense.

(3) The Public Health Service, including the Indian Health Service.

(c) With respect to any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2), beginning on or after January 1, 1993, the manufacturer shall provide a discount in an amount equal to the amount by which the change in non-Federal price exceeds the amount equal to—

(1) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the last day of the month preceding the month during which the contract for the covered drug goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period as the Secretary considers appropriate); multiplied by

(2) the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last month of the period described in paragraph (1) and the last month preceding the month during which the contract goes into effect for which Consumer Price Index data is available.

(d) In the case of a covered drug of a manufacturer that has entered into a multi-year contract with the Secretary under subsection (a)(2) for the procurement of the drug—

(1) during any one-year period that follows the first year for which the contract is in effect, the contract price charged for the drug may not exceed the contract price charged during the preceding one-year period, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) during the 12-month period ending with the last month of such preceding one-year period for which Consumer Price Index data is available; and

(2) in applying subsection (c) to determine the amount of the discount provided with respect to the drug during a year that follows the first year for which the contract is in effect, any reference in such subsection to "the month during which the contract goes into effect" shall be considered a reference to the first month of such following year.

(e)(1) The manufacturer of any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2) shall—

(A) not later than 30 days after the first day of the last quarter that begins before the agreement takes effect (or, in the case of an agreement that takes effect on January 1, 1993, not later than December 4, 1992), report to the Secretary the non-Federal average manufacturer price for the drug during the one-year period that ends on the last day of the previous quarter; and

(B) not later than 30 days after the last day of each quarter for which the agreement is in effect, report to the Secretary the non-Federal average manufacturer price for the drug during such quarter.

(2) The provisions of subparagraphs (B) and (C) of section 1927(b)(3) of the Social Security Act shall apply to drugs described in paragraph (1) and the Secretary in the same manner as such provisions apply to covered outpatient drugs and the Secretary of Health and Human Services under such subparagraphs, except that references in such subparagraphs to prices or information reported or required under "subparagraph (A)" shall be deemed to refer to information reported under paragraph (1).

(3) In order to determine the accuracy of a drug price that is reported to the Secretary under paragraph (1), the Secretary may audit the relevant records of the manufacturer or of any wholesaler that distributes the drug, and may delegate the authority to audit such records to the appropriate Federal agency described in subsection (b).

(4) Any information contained in a report submitted to the Secretary under paragraph (1) or obtained by the Secretary through any audit

conducted under paragraph (3) shall remain confidential, except as the Secretary determines necessary to carry out this section and to permit the Comptroller General and the Director of the Congressional Budget Office to review the information provided.

(f) The Secretary shall supply to the Secretary of Health and Human Services—

(1) upon the execution or termination of any master agreement, the name of the manufacturer, and

(2) on a quarterly basis, a list of manufacturers who have entered into master agreements under this section.

(g)(1) Any reference in this section to a provision of the Social Security Act shall be deemed to be a reference to the provision as in effect on November 4, 1992.

(2) A manufacturer is deemed to meet the requirements of subsection (a) if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of this section (as in effect immediately after the enactment of this section), and would have entered into an agreement under this section (as such section was in effect at such time), but for a legislative change in this section after November 4, 1992.

(h) In this section:

(1) The term "change in non-Federal price" means, with respect to a covered drug that is subject to an agreement under this section, an amount equal to—

(A) the non-Federal average manufacturer price of the drug during the 3-month period that ends with the month preceding the month during which a contract goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period as the Secretary considers appropriate); minus

(B) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the end of the period described in subparagraph (A) (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period preceding the period described in subparagraph (A) as the Secretary considers appropriate).

(2) The term "covered drug" means—

(A) a drug described in section 1927(k)(7)(A)(ii) of the Social Security Act, or that would be described in such section but for the application of the first sentence of section 1927(k)(3) of such Act;

(B) a drug described in section 1927(k)(7)(A)(iv) of the Social Security Act, or that would be described in such section but for the application of the first sentence of section 1927(k)(3) of such Act;

(C) any biological product identified under section 600.3 of title 21, Code of Federal Regulations; or

(D) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act.



(3) The term “depot” means a centralized commodity management system through which covered drugs procured by an agency of the Federal Government are—

(A) received, stored, and delivered through—

(i) a federally owned and operated warehouse system, or

(ii) a commercial entity operating under contract with such agency; or

(B) delivered directly from the commercial source to the entity using such covered drugs.

(4) The term “manufacturer” means any entity which is engaged in—

(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(5) The term “non-Federal average manufacturer price” means, with respect to a covered drug and a period of time (as determined by the Secretary), the weighted average price of a single form and dosage unit of the drug that is paid by wholesalers in the United States to the manufacturer, taking into account any cash discounts or similar price reductions during that period, but not taking into account—

(A) any prices paid by the Federal Government; or

(B) any prices found by the Secretary to be merely nominal in amount.

(6) The term “weighted average price” means, with respect to a covered drug and a period of time (as determined by the Secretary) an amount equal to—

(A) the sum of the products of the average price per package unit of each quantity of the drug sold during the period and the number of package units of the drug sold during the period; divided by

(B) the total number of package units of the drug sold during the period.

(i)(1) If the Secretary modifies a multi-year contract described in subsection (d) to include a covered drug of the manufacturer that was not available for inclusion under the contract at the time the contract went into effect, the price of the drug shall be determined as follows:

(A) For the portion of the first contract year during which the drug is so included, the price of the drug shall be determined in accordance with subsection (a)(2), except that the reference in such subsection to “the one-year period beginning on the date the agreement takes effect” shall be considered a reference to such portion of the first contract year.

(B) For any subsequent contract year, the price of the drug shall be determined in ac-

cordance with subsection (d), except that each reference in such subsection to “the first year for which the contract is in effect” shall be considered a reference to the portion of the first contract year during which the drug is included under the contract.

(2) In this subsection, the term “contract year” means any one-year period for which a multi-year contract described in subsection (d) is in effect.

(Added Pub. L. 102-585, title VI, §603(a)(1), Nov. 4, 1992, 106 Stat. 4971; amended Pub. L. 103-18, §1(a), Apr. 12, 1993, 107 Stat. 53; Pub. L. 103-446, title XII, §1201(e)(27), (f)(6), Nov. 2, 1994, 108 Stat. 4686, 4687.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(4)(A), (e)(2), (g)(1), and (h)(2)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of Title 42. Section 1927 of the Act is classified to section 1396r-8 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Public Health Service Act, referred to in subsec. (a)(4)(C), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Enactment of this section, referred to in subsec. (g)(2), means enactment of Pub. L. 102-585, which enacted this section and was approved Nov. 4, 1992.

Section 506 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (h)(2)(D), is classified to section 356 of Title 21, Food and Drugs.

#### AMENDMENTS

1994—Subsec. (e)(1)(A). Pub. L. 103-446, §1201(e)(27)(A), (f)(6)(A), substituted “December 4, 1992” for “30 days after the date of the enactment of this section” and “one-year period” for “1-year period”.

Subsec. (f)(2). Pub. L. 103-446, §1201(e)(27)(B), substituted a period for “, and” at end.

Subsec. (g)(1), (2). Pub. L. 103-446, §1201(f)(6)(B), substituted “November 4, 1992” for “the date of the enactment of this section”.

1993—Subsec. (a)(2). Pub. L. 103-18, §1(a)(1), struck out “preceding such date” before “as the Secretary considers appropriate”.

Subsec. (c). Pub. L. 103-18, §1(a)(2), in introductory provisions, struck out “for calendar quarters” after “subsection (a)(2),”, and in par. (1), struck out “preceding the month during which the contract goes into effect” after “during such period” and substituted “multiplied by” for “increased by”.

Subsec. (d)(1). Pub. L. 103-18, §1(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “during any one-year period that follows the first year for which the contract is in effect, the price charged may not exceed the price charged during the preceding one-year period, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last months of such one-year periods for which Consumer Price Index data is available; and”.

Subsec. (i). Pub. L. 103-18, §1(a)(4), added subsec. (i).

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 1(b) of Pub. L. 103-18 provided that: “The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 603 of the Veterans Health Care Act of 1992 [Pub. L. 102-585].”

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1396r-8.

## SUBCHAPTER III—STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

## AMENDMENTS

1977—Pub. L. 95-62, §4(a), July 5, 1977, 91 Stat. 263, substituted "DOMICILIARY, NURSING HOME, AND HOSPITAL CARE" for "NURSING HOME CARE" in subchapter heading.

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8105, 8122 of this title.

## § 8131. Definitions

For the purpose of this subchapter—

(1) The veteran population of each State shall be determined on the basis of the latest figures certified by the Department of Commerce.

(2) The term "State" does not include any possession of the United States.

(3) The term "construction" means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, or hospital care in State homes, and the provision of initial equipment for any such buildings.

(4) The term "cost of construction" means the amount found by the Secretary to be necessary for a construction project, including architect fees, but excluding land acquisition costs.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 501, §5031; amended Pub. L. 94-581, title II, §206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95-62, §3(1), (2), July 5, 1977, 91 Stat. 262; Pub. L. 99-576, title II, §224(d), Oct. 28, 1986, 100 Stat. 3263; renumbered §8131, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5031 of this title as this section.

Par. (4). Pub. L. 102-83 substituted "Secretary" for "Administrator".

1986—Pub. L. 99-576 redesignated pars. (a) to (d) as pars. (1) to (4), respectively.

1977—Par. (c). Pub. L. 95-62, §3(1), inserted construction of new domiciliary buildings, expansion, remodeling, or alteration of existing domiciliary and hospital buildings, and provision of initial equipment for any such buildings to definition of "construction".

Par. (d). Pub. L. 95-62, §3(2), struck out provisions which had limited definition of "cost of construction" to the cost of construction of nursing home facilities.

1976—Par. (a). Pub. L. 94-581 substituted "veteran" for "war veteran".

## EFFECTIVE DATE OF 1986 AMENDMENT

Section 224(e) of Pub. L. 99-576 provided that: "The amendments made by this section [amending this section and sections 5033 and 5035 [now 8133 and 8135] of this title] shall take effect on July 1, 1987."

## EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of Pub. L. 95-62 provided that:

"(a) Except as provided in subsection (b) of this section, the amendments made by this Act [amending this section and sections 5032 to 5036 [now 8132 to 8136] of this title and repealing section 644 of this title] shall be effective October 1, 1977.

"(b)(1) The terms and conditions of any grant made prior to October 1, 1977, under section 644 of title 38, United States Code [former section 644 of this title], and regulations prescribed thereunder, shall remain in full force and effect unless modified, by the mutual agreement of the parties, in accordance with the provisions of subchapter III of chapter 81 of such title, and regulations prescribed thereunder, in effect after September 30, 1977.

"(2) With respect to any grant made prior to October 1, 1977, under subchapter III of chapter 81 of such title, the Administrator of Veterans' Affairs shall, upon application of a grantee, modify the terms and conditions of such grant to comply with the provisions of such subchapter as amended by this Act, and regulations prescribed thereunder, and shall promptly notify each such grantee of the grantee's right to request such modification."

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

## SHORT TITLE OF 1977 AMENDMENT

For short title of Pub. L. 95-62 as the "State Veterans' Home Assistance Improvement Act of 1977", see section 1 of Pub. L. 95-62, set out as a Short Title of 1977 Amendment note under section 101 of this title.

## § 8132. Declaration of purpose

The purpose of this subchapter is to assist the several States to construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home, or hospital care to veterans in State homes.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 501, §5032; amended Pub. L. 94-581, title II, §206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95-62, §3(3), July 5, 1977, 91 Stat. 262; Pub. L. 98-528, title I, §105(1), Oct. 19, 1984, 98 Stat. 2689; renumbered §8132, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5032 of this title as this section.

1984—Pub. L. 98-528 inserted "(or to acquire facilities to be used as State home facilities) after "State home facilities".

1977—Pub. L. 95-62 inserted references to the construction of State home facilities for furnishing of domiciliary care and to the expansion, remodeling, and alteration of existing buildings for furnishing domiciliary, nursing home, or hospital care to veterans in State homes.

1976—Pub. L. 94-581 substituted "veterans" for "war veterans".

## EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section

5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

### § 8133. Authorization of appropriations

(a) There are hereby authorized to be appropriated such sums as are necessary to carry out this subchapter. Sums appropriated pursuant to this section shall be used for making grants to States which have submitted, and have had approved by the Secretary, applications for carrying out the purposes and meeting the requirements of this subchapter.

(b) Sums appropriated pursuant to subsection (a) of this section shall remain available until expended.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 501, §5033; amended Pub. L. 89-311, §7(a), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 90-432, §2, July 26, 1968, 82 Stat. 448; Pub. L. 93-82, title IV, §403(c), Aug. 2, 1973, 87 Stat. 196; Pub. L. 95-62, §3(4), July 5, 1977, 91 Stat. 262; Pub. L. 96-151, title I, §101(a), Dec. 20, 1979, 93 Stat. 1092; Pub. L. 97-251, §8, Sept. 8, 1982, 96 Stat. 716; Pub. L. 99-576, title II, §224(a), Oct. 28, 1986, 100 Stat. 3262; Pub. L. 101-110, §1(c), Oct. 6, 1989, 103 Stat. 682; Pub. L. 101-237, title II, §201(b), Dec. 18, 1989, 103 Stat. 2066; renumbered §8133, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title IV, §402, Nov. 4, 1992, 106 Stat. 4954.)

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102-585 struck out before period at end of first sentence “through September 30, 1992”.

1991—Pub. L. 102-40 renumbered section 5033 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

1989—Subsec. (a). Pub. L. 101-237 substituted “September 30, 1992” for “September 30, 1990”.

Pub. L. 101-110 substituted “1990” for “1989”.

1986—Subsec. (a). Pub. L. 99-576 amended first sentence generally. Prior to amendment, first sentence read as follows: “There is hereby authorized to be appropriated \$15,000,000 for fiscal year 1980 and such sums as may be necessary for fiscal year 1981 and for each of the five succeeding fiscal years.”

1982—Subsec. (a). Pub. L. 97-251 substituted “for fiscal year 1980 and such sums as may be necessary for fiscal year 1981 and for each of the five succeeding fiscal years” for “for the fiscal year ending September 30, 1978, a like sum for each of the two succeeding fiscal years, and such sums as may be necessary for the fiscal years ending September 30, 1981, and September 30, 1982”.

1979—Subsec. (a). Pub. L. 96-151 inserted provisions extending authorization of a like sum from one to two years, and provisions authorizing to be appropriated such sums as necessary for the fiscal years ending Sept. 30, 1981, and Sept. 30, 1982.

1977—Subsec. (a). Pub. L. 95-62 substituted “\$15,000,000 for the fiscal year ending September 30, 1978, and a like sum for the succeeding fiscal year” for “\$5,000,000 for the fiscal year ending June 30, 1965, and a like sum for each of the fourteen succeeding fiscal years” and “applications for carrying out the purposes and meeting the requirements of this subchapter” for “applications for carrying out the purposes of section 5032 of this title”.

Subsec. (b). Pub. L. 95-62 substituted “shall remain available until expended” for “shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated”.

1973—Subsec. (a). Pub. L. 93-82 substituted “fourteen succeeding fiscal years” for “nine succeeding fiscal years”.

1968—Subsec. (a). Pub. L. 90-432 substituted “nine succeeding fiscal years” for “four succeeding fiscal years”.

1965—Subsec. (c). Pub. L. 89-311 repealed subsec. (c) which limited to not more than 10 per centum of the funds appropriated pursuant to subsec. (a) of this section the moneys which could be used to assist in the construction of nursing home care facilities in any one State.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(a) of Pub. L. 101-110 provided that: “The provisions of and amendments made by this Act [amending this section and enacting provisions set out as notes under sections 1712, 1720B, and 3729 of this title and under section 6302 of Title 5, Government Organization and Employees] shall take effect as of October 1, 1989.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-576 effective July 1, 1987, see section 224(e) of Pub. L. 99-576, set out as a note under section 8131 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

### § 8134. General regulations

(a) Within six months after the date of enactment of any amendment to this section with respect to such amendment, the Secretary shall prescribe the following by regulation:

(1) The number of beds required to provide adequate nursing home care to veterans residing in each State.

(2) General standards of construction, repair, and equipment for facilities constructed or acquired with assistance received under this subchapter.

(3) General standards for the furnishing of care in facilities which are constructed or acquired with assistance received under this subchapter, which standards shall be no less stringent than those standards prescribed by the Secretary pursuant to section 1720(b) of this title.

(b) The Secretary may inspect any State facility constructed or acquired with assistance received under this subchapter at such times as the Secretary deems necessary to insure that such facility meets the standards prescribed under subsection (a)(3).

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 502, §5034; amended Pub. L. 89-311, §7(b),

Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93-82, title IV, § 403(d), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94-581, title I, § 107(b), title II, § 206(b), Oct. 21, 1976, 90 Stat. 2847, 2859; Pub. L. 95-62, § 3(5), (6), July 5, 1977, 91 Stat. 262; Pub. L. 96-330, title IV, § 404, Aug. 26, 1980, 94 Stat. 1052; Pub. L. 98-528, title I, § 105(2), Oct. 19, 1984, 98 Stat. 2689; renumbered § 8134, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, § 14(f)(6), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, §§ 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5034 of this title as this section.

Pub. L. 102-83, § 5(c)(1), substituted “1720(b)” for “620(b)” in subsec. (a)(3).

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by inserting “(a)” before “Within six months”, substituting “any amendment to this section” for “this section or any amendment to it”, designating sentence at end of par. (3) as subsec. (b), realigning such sentence, and substituting “the standards prescribed under subsection (a)(3)” for “such standards” at end of such sentence.

1984—Pars. (2), (3). Pub. L. 98-528 inserted “or acquired” after “constructed” wherever appearing.

1980—Par. (1). Pub. L. 96-330 struck out “, which number shall not exceed two and one-half beds per thousand veteran population in the case of any State” after “residing in each State”.

1977—Par. (2). Pub. L. 95-62, § 3(5), substituted “repair, and equipment for facilities constructed” for “repairs, modernization, alteration, and equipment for facilities for furnishing nursing home care which are constructed”.

Par. (3). Pub. L. 95-62, § 3(6), substituted “furnishing of care” for “furnishing of nursing home care”.

1976—Pub. L. 94-581 substituted “date of enactment of this section or any amendment to it with respect to such amendment” for “date of enactment of this subchapter” in provisions preceding par. (1), substituted “veterans” and “veteran” for “war veterans” and “war veteran”, respectively, in par. (1), and added par. (3).

1973—Par. (1). Pub. L. 93-82 substituted “two and one-half beds” for “one and one-half beds”.

1965—Par. (1). Pub. L. 89-311 substituted “one and one-half beds” for “one-half bed”.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8135 of this title.

### § 8135. Applications with respect to projects; payments

(a) Any State desiring to receive assistance for a project for construction of State home facilities (or acquisition of a facility to be used as a State home facility) must submit to the Secretary an application. Such application shall set forth—

(1) the amount of the grant requested with respect to such project which may not exceed 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of such project,

(2) a description of the site for such project,

(3) plans and specifications for such project in accordance with regulations prescribed by the Secretary pursuant to section 8134(a)(2) of this title,

(4) reasonable assurance that upon completion of such project the facilities will be used principally to furnish to veterans the level of care for which such application is made and that not more than 25 percent of the bed occupancy at any one time will consist of patients who are not receiving such level of care as veterans,

(5) reasonable assurance that title to such site is or will be vested solely in the applicant, a State home, or another agency or instrumentality of the State,

(6) reasonable assurance that adequate financial support will be available for the construction of the project (or for facility acquisition and construction of the project) by July 1 of the fiscal year for which the application is approved and for its maintenance and operation when complete,

(7) reasonable assurance that the State will make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and give the Secretary, upon demand, access to the records upon which such information is based,

(8) reasonable assurance that the rates of pay for laborers and mechanics engaged in construction of the project will be not less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5) (known as the Davis-Bacon Act), and

(9) in the case of a project for acquisition of a facility, reasonable assurance that the estimated total cost of acquisition of the facility and of any expansion, remodeling, and alteration of the acquired facility will not be greater than the estimated cost of construction of an equivalent new facility.

(b)(1) Upon receipt of an application for a grant under subsection (a) of this section, the Secretary—

(A) shall determine whether the application meets the requirements of this section and of the regulations prescribed under section 8134 of this title;

(B) shall notify the State submitting the application whether the application conforms with those requirements and, if it does not, of the actions necessary to bring the application into conformance with those requirements; and

(C) shall determine the priority of the project described in the application in accordance with the provisions of this subsection.

(2) Subject to paragraphs (3) and (5)(C) of this subsection, the Secretary shall accord priority to applications in the following order:

(A) An application from a State that has made sufficient funds available for the construction or acquisition of the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State to make such funds available for such purpose.

(B) An application from a State that does not have a State home facility constructed or acquired with assistance under this subchapter (or for which such a grant has been made).

(C) An application from a State which the Secretary determines, in accordance with criteria and procedures specified in regulations which the Secretary shall prescribe, has a greater need for nursing home or domiciliary beds than other States from which applications are received.

(D) An application that meets such other criteria as the Secretary determines are appropriate and has established in regulations.

(3) In according priorities to projects under paragraph (2) of this subsection, the Secretary—

(A) shall accord priority only to projects which would involve construction or acquisition of either nursing home or domiciliary buildings; and

(B) may not accord any priority to a project which would expand a State's capacity to furnish hospital care in a State home.

(4) The Secretary shall establish a list of approved projects (including projects that have been conditionally approved under paragraph (6) of this subsection), in the order of their priority, as of August 15 of each year. The Secretary shall award grants in the order of their priority on the list during the fiscal year beginning on October 1 of the calendar year in which the list was made.

(5)(A) The Secretary shall defer approval of an application that otherwise meets the requirements of this section if the State submitting the application does not, by the July 1 deadline (as defined in subparagraph (D) of this paragraph), demonstrate to the satisfaction of the Secretary that the State has provided adequate financial support for construction of the project.

(B) In a case in which approval of an application is deferred under subparagraph (A) of this paragraph, the Secretary shall select for award of a grant or grants under this subsection an application or applications which would not have been approved during the fiscal year but for the deferral and to which the Secretary accords the highest priority under paragraph (2) of this subsection.

(C) An application deferred in accordance with the requirements of this paragraph shall be accorded priority in any subsequent fiscal year ahead of applications that had not been approved before the first day of the fiscal year in which the deferred application was first approved.

(D) For the purposes of this paragraph, the term "July 1 deadline" means July 1 of the fiscal year in which the State is notified by the Secretary of the availability of funding for a grant for such project.

(6)(A) The Secretary may conditionally approve a project under this section, conditionally award a grant for the project, and obligate funds for the grant if the Secretary determines that the application for the grant is sufficiently complete to warrant awarding the grant and that, based on assurances provided by the State submitting the application, the State will complete the application and meet all the requirements referred to in paragraph (1)(A) of this subsection by the date, not later than 180 days after the date of the conditional approval, specified by the Secretary.

(B) If a State does not complete the application and meet all the requirements referred to in such paragraph by the date specified by the Secretary under subparagraph (A) of this paragraph, the Secretary shall rescind the conditional approval and award under such subparagraph and deobligate the funds previously obligated in connection with the application. In the event the Secretary rescinds conditional approval of a project under this subparagraph, the Secretary may not further obligate funds for the project during the fiscal year in which the Secretary rescinds such approval.

(7)(A) Subject to subparagraph (B) of this paragraph, the Secretary may increase the amount of any grant awarded to any State for a project under this section by an amount by which the Secretary determines that the estimated cost of the construction or acquisition has increased from the estimated cost on which the Secretary based the determination to award the grant, without regard to the position of such project on the list established under paragraph (4) of this subsection, if the Secretary determines that the grant was awarded before the State entered into a contract for the construction or acquisition provided for in such project.

(B) A grant may not be increased under subparagraph (A) of this paragraph by more than 10 percent of the amount of the grant initially awarded for such project, and the amount of such grant, as increased, may not exceed 65 percent of the cost of the project.

(c) No application submitted to the Secretary under this section shall be disapproved until the Secretary has afforded the applicant notice and an opportunity for a hearing.

(d) The amount of a grant under this subchapter shall be paid to the applicant or, if designated by the applicant, the State home for which such project is being carried out or any other agency or instrumentality of the applicant. Such amount shall be paid, in advance or by way of reimbursement, and in such installments consistent with the progress of the project as the Secretary may determine and certify for payment to the Secretary of the Treasury. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved.

(e) Any amendment of any application, whether or not approved, shall be subject to approval in the same manner as an original application.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 502, §5035; amended Pub. L. 89-311, §7(a), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93-82, title IV, §403(e), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94-581, title II, §§206(b), 210(e)(10), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 95-62, §3(7)-(12), July 5, 1977, 91 Stat. 262, 263; Pub. L. 97-295, §4(92), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-528, title I, §105(3), Oct. 19, 1984, 98 Stat. 2689; Pub. L. 99-166, title II, §205, Dec. 3, 1985, 99 Stat. 953; Pub. L. 99-576, title II, §224(b), (c), Oct. 28, 1986, 100 Stat. 3262, 3263; Pub. L. 100-322, title II, §206, May 20, 1988, 102 Stat. 513; renumbered §8135 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(f)(7), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title IV, §§403(a), 404(a), Nov. 4, 1992, 106 Stat. 4954; Pub. L. 103-446, title XII, §1201(d)(18), Nov. 2, 1994, 108 Stat. 4684.)

## REFERENCES IN TEXT

Act of March 3, 1931, referred to in subsec. (a)(8), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, known as the Davis-Bacon Act, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

## AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103-446 substituted “section 8134(a)(2)” for “section 8134(2)”.

1992—Subsec. (b)(6)(A). Pub. L. 102-585, §403(a), substituted “180 days” for “90 days”.

Subsec. (b)(6)(B). Pub. L. 102-585, §404(a), inserted at end “In the event the Secretary rescinds conditional approval of a project under this subparagraph, the Secretary may not further obligate funds for the project during the fiscal year in which the Secretary rescinds such approval.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5035 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “Any State” for “After regulations have been prescribed by the Administrator under section 5034 of this title, any State”.

Pub. L. 102-40, §402(d)(1), substituted “8134(2)” for “5034(2)” in par. (3).

Subsec. (b). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (b)(1)(A). Pub. L. 102-40, §402(d)(1), substituted “8134” for “5034”.

Subsecs. (c), (d). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

1988—Subsec. (b)(4). Pub. L. 100-322, §206(a), (b)(1), inserted “(including projects that have been conditionally approved under paragraph (6) of this subsection)” after “projects” and substituted “August 15” for “July 1”.

Subsec. (b)(6), (7). Pub. L. 100-322, §206(b)(2), added pars. (6) and (7).

1986—Subsec. (b). Pub. L. 99-576, §224(b), amended subsec. (b) generally, substituting provisions consisting of pars. (1) to (5) for former provisions consisting of pars. (1) and (2).

Subsec. (d). Pub. L. 99-576, §224(c), struck out par. (1) designation, substituted “The amount of a grant under this subchapter shall be paid” for “Upon approving an application under this section, the Administrator shall certify to the Secretary of the Treasury the amount of the grant so approved, but in no event an amount greater than 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition

and construction) of the project, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment” and struck out par. (2) which read as follows: “No one State may receive in any fiscal year in the aggregate under this subchapter more than one-third of the amount appropriated for carrying out this subchapter in such fiscal year.”

1985—Subsec. (a)(6). Pub. L. 99-166, §205(a), inserted “by July 1 of the fiscal year for which the application is approved”.

Subsec. (b). Pub. L. 99-166, §205(b), designated existing provisions as par. (1), redesignated cls. (1) to (4) as (A) to (D), respectively, and added par. (2).

1984—Subsec. (a). Pub. L. 98-528, §105(3)(A), inserted “(or acquisition of a facility to be used as a State home facility)” after “State home facilities” in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-528, §105(3)(B), inserted “(or of the estimated cost of facility acquisition and construction)” after “cost of construction”.

Subsec. (a)(6). Pub. L. 98-528, §105(3)(C), inserted “(or for facility acquisition and construction of the project)” after “construction of the project”.

Subsec. (a)(8). Pub. L. 98-528, §105(3)(D), substituted “the Act of March 3, 1931 (40 U.S.C. 276a—276a-5)” for “sections 276a through 276a-5 of title 40”.

Subsec. (a)(9). Pub. L. 98-528, §105(3)(E), added par. (9).

Subsec. (b)(2). Pub. L. 98-528, §105(3)(F), inserted “(or of the estimated cost of facility acquisition and construction)” after “cost of construction”.

Subsec. (b)(4). Pub. L. 98-528, §105(3)(G), substituted “the carrying out of such project” for “the construction of such project”.

Subsec. (d)(1). Pub. L. 98-528, §105(3)(H), inserted “(or of the estimated cost of facility acquisition and construction)” after “cost of construction” in first sentence, substituted “carried out” for “constructed” in second sentence, substituted “the project” for “construction” in third sentence, struck out “the construction of” before “an approved project” in fourth sentence.

1982—Subsecs. (a)(1), (4), (b)(2), (d)(1). Pub. L. 97-295 substituted “percent” for “per centum” wherever appearing.

1977—Subsec. (a). Pub. L. 95-62, §3(7), (8), substituted “State home facilities must submit” for “State home facilities for furnishing nursing home care must submit” in provisions preceding par. (1) and, “to furnish to veterans the level of care for which such application is made and that not more than 25 per centum of the bed occupancy at any one time will consist of patients who are not receiving such level of care as war veterans” for “to furnish nursing home care to veterans and that not more than 10 per centum of the bed occupancy at any one time will consist of patients who are not receiving nursing home care as veterans” in par. (4).

Subsec. (b)(3). Pub. L. 95-62, §3(9), substituted “reasonable assurances under subsection (a) of this section as the Administrator” for “reasonable assurances as to use, title, financial support, reports and access to records, and payment of prevailing rates of wages, as the Administrator”.

Subsec. (c). Pub. L. 95-62, §3(10), substituted “afforded the applicant notice and an opportunity for a hearing” for “afforded the applicant an opportunity for a hearing”.

Subsec. (d). Pub. L. 95-62, §3(11), designated existing provisions as par. (1), substituted “the Administrator shall certify to the Secretary of the Treasury the amount of the grant so approved” for “the Administrator shall certify to the Secretary of the Treasury the amount of the grant requested with respect to such project in such application”, and added par. (2).

Subsec. (e). Pub. L. 95-62, §3(12), substituted “amendment of any application, whether or not approved,” for “amendment of any approved application”.

1976—Subsec. (a)(4). Pub. L. 94-581, §206(b), substituted “veterans” for “war veterans” in two places.

Subsec. (b). Pub. L. 94-581, §206(b), 210(e)(10), substituted “the Administrator” for “he” in provisions

preceding par. (1) and "veterans" for "war veterans" in par. (4).

1973—Subsecs. (a)(1), (b)(2), (d). Pub. L. 93-82 substituted "65 per centum" for "50 per centum".

1965—Subsec. (b). Pub. L. 89-311 repealed par. (3) which placed a limit of 10 per centum of the funds appropriated for any fiscal year pursuant to section 5033(a) of this title upon the amount which could be used to assist in the construction of facilities in any one state, and redesignated pars. (4) and (5) as pars. (3) and (4), respectively.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 403(b) of Pub. L. 102-585 provided that: "The amendment made by subsection (a) [amending this section] shall apply to projects that are conditionally approved after September 30, 1992."

Section 404(b) of Pub. L. 102-585 provided that: "The amendment made by subsection (a) [amending this section] shall apply to rescissions of conditional approval of projects after the date of the enactment of this Act [Nov. 4, 1992]."

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-576 effective July 1, 1987, see section 224(e) of Pub. L. 99-576, set out as a note under section 8131 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

#### DEADLINE FOR REGULATIONS

Section 224(f) of Pub. L. 99-576 provided that: "The Administrator of Veterans' Affairs shall prescribe regulations not later than April 1, 1987, to implement the amendments made by this section [amending this section and sections 5031 and 5033 [now 8131 and 8133] of this title]."

### § 8136. Recapture provisions

If, within the 20-year period beginning on the date of the approval by the Secretary of the final architectural and engineering inspection of any project with respect to which a grant has been made under this subchapter (except that the Secretary, pursuant to regulations which the Secretary shall prescribe, may at the time of such grant provide for a shorter period than 20, but not less than seven, years, based on the magnitude of the project and the grant amount involved, in the case of the acquisition, expansion, remodeling, or alteration of existing facilities), the facilities covered by the project cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home, or hospital care to veterans, the United States

shall be entitled to recover from the State which was the recipient of the grant under this subchapter, or from the then owner of such facilities, 65 percent of the then value of such project (but in no event an amount greater than the amount of assistance provided under this subchapter), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which such facilities are situated.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 503, §5036; amended Pub. L. 93-82, title IV, §403(f), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94-581, title II, §206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95-62, §3(13), July 5, 1977, 91 Stat. 263; Pub. L. 97-295, §4(92), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-528, title I, §105(4), Oct. 19, 1984, 98 Stat. 2690; renumbered §8136, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title IV, §405, Nov. 4, 1992, 106 Stat. 4954.)

#### AMENDMENTS

1992—Pub. L. 102-585 substituted "If, within the 20-year period beginning on the date of the approval by the Secretary of the final architectural and engineering inspection of any project" for "If, within 20 years after completion of any project" and "the facilities covered by the project cease" for "such facilities cease".

1991—Pub. L. 102-40 renumbered section 5036 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" in two places.

1984—Pub. L. 98-528 struck out "for construction" after "completion of any project"; inserted "acquisition," after "in the case of the"; substituted "value of such project" for "value of such construction"; struck out "for such construction" after "assistance provided for", which amendment was executed by striking out "for such construction" after "assistance provided" as the probable intent of Congress, because "for" appeared only once after "assistance provided"; and substituted "20" for "twenty" in two places.

1982—Pub. L. 97-295 substituted "percent" for "per centum".

1977—Pub. L. 95-62 substituted "If, within twenty years after completion of any project for construction with respect to which a grant has been made under this subchapter (except that the Administrator, pursuant to regulations which the Administrator shall prescribe, may at the time of such grant provide for a shorter period than twenty, but not less than seven, years, based on the magnitude of the project and the grant amount involved, in the case of the expansion, remodeling, or alteration of existing facilities), such facilities cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home, or hospital care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant under this subchapter, or from the then owner of such facilities, 65 per centum of the then value of such construction (but in no event an amount greater than the amount of assistance provided for such construction under this subchapter)" for "If, within twenty years after completion of any project for construction of facilities for furnishing nursing home care with respect to which a grant has been made under this subchapter, such facilities cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing nursing home care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant under this subchapter, or from the then owner of such facilities, 65 per centum of the then value of such facilities".

1976—Pub. L. 94-581 substituted “veterans” for “war veterans”.

1973—Pub. L. 93-82 substituted “65 per centum” for “50 per centum”.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

### § 8137. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any State home for which facilities are constructed or acquired with assistance received under this subchapter.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 503, §5037; amended Pub. L. 98-528, title I, §105(5), Oct. 19, 1984, 98 Stat. 2690; renumbered §8137, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5037 of this title as this section.

1984—Pub. L. 98-528 inserted “or acquired” after “constructed”.

### SUBCHAPTER IV—SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8213 of this title; title 25 section 1680f.

### § 8151. Statement of congressional purpose

It is the purpose of this subchapter to improve the quality of hospital care and other medical service provided veterans under this title, by authorizing the Secretary to enter into agreements with medical schools, health-care facilities, and research centers throughout the country in order to receive from and share with such medical schools, health-care facilities, and research centers the most advanced medical techniques and information, as well as certain specialized medical resources which otherwise might not be feasibly available or to effectively utilize other medical resources with the surrounding medical community, without diminution of services to veterans. Among other things, it is intended, by these means, to

strengthen the medical programs at those Department hospitals which are located in small cities or rural areas and thus are remote from major medical centers. It is further the purpose of this subchapter to improve the provision of care to veterans under this title by authorizing the Secretary to enter into agreements with State veterans facilities for the sharing of health-care resources.

(Added Pub. L. 89-785, title II, §203, Nov. 7, 1966, 80 Stat. 1373, §5051; amended Pub. L. 101-366, title II, §202(a), Aug. 15, 1990, 104 Stat. 438; renumbered §8151, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-210, §3(a), Dec. 20, 1993, 107 Stat. 2497.)

#### AMENDMENTS

1993—Pub. L. 103-210 inserted at end “It is further the purpose of this subchapter to improve the provision of care to veterans under this title by authorizing the Secretary to enter into agreements with State veterans facilities for the sharing of health-care resources.”

1991—Pub. L. 102-40 renumbered section 5051 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Department” for “Veterans’ Administration”.

1990—Pub. L. 101-366 substituted “health-care facilities,” for “hospitals,” in two places.

### § 8152. Definitions

For the purposes of this subchapter—

(1) The term “research center” means an institution (or part of an institution), the primary function of which is research, training of specialists, and demonstrations and which, in connection therewith, provides specialized, high quality diagnostic and treatment services for inpatients and outpatients.

(2) The term “specialized medical resources” means medical resources (whether equipment, space, or personnel) which, because of cost, limited availability, or unusual nature, are either unique in the medical community or are subject to maximum utilization only through mutual use.

(3) The term “health-care resource” includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, any other health-care service, and any health-care support or administrative resource.

(4) The term “hospital”, unless otherwise specified, includes any Federal, State, local, or other public or private hospital.

(Added Pub. L. 89-785, title II, §203, Nov. 7, 1966, 80 Stat. 1373, §5052; renumbered §8152, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, §14(f)(8), June 13, 1991, 105 Stat. 288; Pub. L. 103-210, §3(b), Dec. 20, 1993, 107 Stat. 2497.)

#### AMENDMENTS

1993—Pars. (3), (4). Pub. L. 103-210 added par. (3) and redesignated former par. (3) as (4).

1991—Pub. L. 102-40 renumbered section 5052 of this title as this section.

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by redес-



ignating pars. (a), (b), and (c) as pars. (1), (2), and (3), respectively, and by realigning the margins.

### § 8153. Specialized medical resources

(a)(1) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Secretary may, when the Secretary determines it to be in the best interest of the prevailing standards of the Department medical care program, make arrangements, by contract or other form of agreement for the mutual use, or exchange of use, of—

(A) specialized medical resources between Department health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools; and

(B) health-care resources between Department health-care facilities and State home facilities recognized under section 1742(a) of this title.

(2) The Secretary may enter into a contract or other agreement under paragraph (1) only if (A) such an agreement will obviate the need for a similar resource to be provided in a Department health care facility, or (B) the Department resources which are the subject of the agreement and which have been justified on the basis of veterans' care are not used to their maximum effective capacity.

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved. Any proceeds to the Government received therefrom shall be credited to the applicable Department medical appropriation and to funds that have been allotted to the facility that furnished the resource involved.

(c) Eligibility for hospital care and medical services furnished any veteran pursuant to this section shall be subject to the same terms as though provided in a Department health care facility, and provisions of this title applicable to persons receiving hospital care or medical services in a Department health care facility shall apply to veterans treated under this section.

(d) When a Department health care facility provides hospital care or medical services, pursuant to a contract or agreement authorized by this section, to an individual who is not eligible for such care or services under chapter 17 of this title and who is entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), such benefits shall be paid, notwithstanding any condition, limitation, or other provision in that title which would otherwise preclude such payment, in accordance with—

(1) rates prescribed by the Secretary of Health and Human Services, after consultation with the Secretary, and

(2) procedures jointly prescribed by the two Secretaries to assure reasonable quality of care and services and efficient and economical utilization of resources,

to such facility therefor or, if the contract or agreement so provides, to the community health care facility which is a party to the contract or agreement.

(e) The Secretary shall submit to the Congress not more than 60 days after the end of each fiscal year a report on the activities carried out under this section. Each report shall include—

(1) an appraisal of the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise; and

(2) recommendations for the improvement or more effective administration of such activities.

(Added Pub. L. 89-785, title II, § 203, Nov. 7, 1966, 80 Stat. 1374, § 5053; amended Pub. L. 91-496, § 4, Oct. 22, 1970, 84 Stat. 1092; Pub. L. 93-82, title III, § 303, Aug. 2, 1973, 87 Stat. 195; Pub. L. 94-581, title I, § 115(a)(1), title II, §§ 206(c), 210(e)(11), Oct. 21, 1976, 90 Stat. 2852, 2859, 2865; Pub. L. 96-151, title III, § 304, Dec. 20, 1979, 93 Stat. 1096; Pub. L. 97-295, § 4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-160, title VII, § 702(20), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 99-576, title II, § 231(c)(1), Oct. 28, 1986, 100 Stat. 3264; Pub. L. 101-366, title II, § 202(b), Aug. 15, 1990, 104 Stat. 438; renumbered § 8153, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, § 14(f)(9), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(D), (E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-210, § 3(c), Dec. 20, 1993, 107 Stat. 2498.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### AMENDMENTS

1993—Subsec. (a). Pub. L. 103-210 designated existing provisions as par. (1) and substituted “other form of agreement for the mutual use, or exchange of use, of—” along with subpars. (A) and (B) and par. (2), for “other form of agreement, as set forth in clauses (1) and (2) below, between Department health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools:

“(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Department health care facility; or

“(2) for the mutual use, or exchange of use, of specialized medical resources in a Department health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.”

1991—Pub. L. 102-40 renumbered section 5053 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places in introductory provisions.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration” wherever appearing.

Subsec. (b). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

Subsec. (c). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration” in two places.

Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “under this section” for “hereunder”.

Subsec. (d). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in introductory provisions.

Subsec. (d)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (d)(2). Pub. L. 102-83, §4(b)(2)(D), substituted "the two Secretaries" for "the Secretary and the Administrator".

Subsec. (e). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions.

1990—Subsec. (a). Pub. L. 101-366, §202(b)(1), substituted "health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools" for "hospitals and other hospitals (or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools or clinics in the medical community" and struck out at end "The Administrator may determine the geographical limitations of a medical community as used in this section."

Subsec. (b). Pub. L. 101-366, §202(b)(2), substituted in first sentence "a methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved." for "a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment." and inserted before period at end of second sentence "and to funds that have been allotted to the facility that furnished the resource involved".

1986—Subsec. (e). Pub. L. 99-576 added subsec. (e).

1983—Subsec. (d). Pub. L. 98-160 substituted "title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)" for "subchapter XVIII of chapter 7 of title 42".

1982—Subsec. (d)(1). Pub. L. 97-295 substituted "Health and Human Services" for "Health, Education, and Welfare".

1979—Subsec. (a). Pub. L. 96-151 inserted provisions relating to applicability to organ banks, blood banks, or similar institutions.

1976—Subsec. (a). Pub. L. 94-581, §§206(c), 210(e)(11), substituted "when the Administrator determines" for "when he determines" and "clauses" for "paragraphs" in provisions preceding cl. (1), and inserted "health care" after "Veterans' Administration" in cls. (1) and (2).

Subsec. (c). Pub. L. 94-581, §206(c)(2), inserted "health care" after "Veterans' Administration" in two places.

Subsec. (d). Pub. L. 94-581, §115(a)(1), inserted subsec. (d).

1973—Subsec. (a). Pub. L. 93-82 struck out "or medical schools" from parenthetical and inserted "or medical schools or clinics" after parenthetical.

1970—Subsec. (a)(1). Pub. L. 91-496 substituted "for the mutual use, or exchange of use," for "for the exchange of use".

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

REPORT TO CONGRESS ON RATES AND PROCEDURES COVERING PAYMENT OF BENEFITS FOR CARE OR SERVICES PROVIDED IN VETERANS' ADMINISTRATION HEALTH CARE FACILITIES TO INDIVIDUALS NOT ELIGIBLE FOR VETERANS' HOSPITAL, NURSING HOME, DOMICILIARY, OR MEDICAL CARE

Section 115(c) of Pub. L. 94-581 provided that at such time as the rates and procedures described in subsec.

(d) of this section were prescribed, the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services], in consultation with the Administrator of Veterans' Affairs, was to submit to the Committee on Ways and Means and the Committee on Veterans' Affairs of the House of Representatives and to the Committee on Finance and the Committee on Veterans' Affairs of the Senate a full report describing such rates and procedures.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8110, 8157, 8158 of this title.

### § 8154. Exchange of medical information

(a) The Secretary is authorized to enter into agreements with medical schools, hospitals, research centers, and individual members of the medical profession under which medical information and techniques will be freely exchanged and the medical information services of all parties to the agreement will be available for use by any party to the agreement under conditions specified in the agreement. In carrying out the purposes of this section, the Secretary shall utilize recent developments in electronic equipment to provide a close educational, scientific, and professional link between Department hospitals and major medical centers. Such agreements shall be utilized by the Secretary to the maximum extent practicable to create, at each Department hospital which is a part of any such agreement, an environment of academic medicine which will help such hospital attract and retain highly trained and qualified members of the medical profession.

(b) In order to bring about utilization of all medical information in the surrounding medical community, particularly in remote areas, and to foster and encourage the widest possible cooperation and consultation among all members of the medical profession in such community, the educational facilities and programs established at Department hospitals and the electronic link to medical centers shall be made available for use by the surrounding medical community (including State home facilities furnishing domiciliary, nursing home, or hospital care to veterans). The Secretary may charge a fee for such services (on annual or like basis) at rates which the Secretary determines, after appropriate study, to be fair and equitable. The financial status of any user of such services shall be taken into consideration by the Secretary in establishing the amount of the fee to be paid. Any proceeds to the Government received therefrom shall be credited to the applicable Department medical appropriation.

(c) The Secretary is authorized to enter into agreements with public and nonprofit private institutions, organizations, corporations, and other entities in order to participate in cooperative health-care personnel education programs within the geographical area of any Department health-care facility located in an area remote from major academic health centers.

(Added Pub. L. 89-785, title II, §203, Nov. 7, 1966, 80 Stat. 1374, §5054; amended Pub. L. 94-424, §1(1), Sept. 28, 1976, 90 Stat. 1332; Pub. L. 94-581, title II, §§206(d), 210(e)(12), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 96-151, title I, §102(a), Dec. 20, 1979,

93 Stat. 1092; Pub. L. 97-251, §9, Sept. 8, 1982, 96 Stat. 716; renumbered §8154, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5054 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1982—Subsec. (b). Pub. L. 97-251 inserted "(including State home facilities furnishing domiciliary, nursing home, or hospital care to veterans)" after "by the surrounding medical community".

1979—Subsec. (c). Pub. L. 96-151 added subsec. (c).

1976—Subsec. (b). Pub. L. 94-581 substituted "by the surrounding" for "by surrounding" and "which the Administrator determines" for "which he determines".

Pub. L. 94-424 inserted provision that any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical appropriation.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8155 of this title.

### § 8155. Pilot programs; grants to medical schools

(a) The Secretary may establish an Advisory Subcommittee on Programs for Exchange of Medical Information, of the Special Medical Advisory Group, established under section 7312 of this title, to advise the Secretary on matters regarding the administration of this section and to coordinate these functions with other research and education programs in the Department of Medicine and Surgery. The Assistant Under Secretary for Health charged with administration of the Department of Medicine and Surgery medical research program shall be an ex officio member of this Subcommittee.

(b) The Secretary, upon the recommendation of the Subcommittee, is authorized to make grants to medical schools, hospitals, and research centers to assist such medical schools, hospitals, and research centers in planning and carrying out agreements authorized by section 8154 of this title. Such grants may be used for the employment of personnel, the construction of facilities, the purchasing of equipment when necessary to implement such programs, and for such other purposes as will facilitate the administration of this section.

(c)(1) There is hereby authorized to be appropriated an amount not to exceed \$3,500,000 for fiscal year 1976; \$1,700,000 for the period beginning July 1, 1976, and ending September 30, 1976; \$4,000,000 for fiscal year 1977; \$4,000,000 for fiscal year 1978; and \$4,000,000 for fiscal year 1979 and for each of the three succeeding fiscal years, for the purpose of developing and carrying out medical information programs under this section on a pilot program basis and for the grants authority in subsection (b) of this section. Pilot programs authorized by this subsection shall be carried out at Department hospitals in geographically dispersed areas of the United States.

(2) Funds authorized under this section shall not be available to pay the cost of hospital, medical, or other care of patients except to the extent that such cost is determined by the Secretary to be incident to research, training, or demonstration activities carried out under this section.

(d) The Secretary, after consultation with the Subcommittee shall prescribe regulations covering the terms and conditions for making grants under this section.

(e) Each recipient of a grant under this section shall keep such records as the Secretary may prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit.

(f) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient of any grant under this section which are pertinent to any such grant.

(Added Pub. L. 89-785, title II, §203, Nov. 7, 1966, 80 Stat. 1375, §5055; amended Pub. L. 92-69, Aug. 6, 1971, 85 Stat. 178; Pub. L. 94-424, §1(2), Sept. 28, 1976, 90 Stat. 1332; Pub. L. 94-581, title II, §§206(e), 210(e)(13), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 96-151, title I, §102(b), Dec. 20, 1979, 93 Stat. 1092; renumbered §8155 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(d)(19), Nov. 2, 1994, 108 Stat. 4684.)

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-446 substituted "section 7312" for "section 4112".

1992—Subsec. (a). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5055 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-40, §402(d)(1), substituted "8154" for "5054".

Subsec. (c)(1). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsecs. (c)(2), (d) to (f). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1979—Subsec. (c)(1). Pub. L. 96-151 inserted authorization for the three succeeding fiscal years after fiscal year 1979.

1976—Subsec. (a). Pub. L. 94-581 substituted "advise the Administrator" for "advise him" and "Assistant Chief Medical Director charged with administration of the Department of Medicine and Surgery medical research program" for "Assistant Chief Medical Director for Research and Education in Medicine".

Subsec. (c)(1). Pub. L. 94-424 substituted provisions authorizing appropriations of \$3,500,000 for fiscal year 1976; \$1,700,000 for the period beginning July 1, 1976, and ending Sept. 30, 1976; \$4,000,000 for fiscal year 1977; \$4,000,000 for fiscal year 1978; and \$4,000,000 for fiscal year 1979 for provisions authorizing appropriations of

\$3,000,000 for each fiscal year 1968 through 1971, and such sums as may be necessary for each fiscal year 1972 through 1975.

1971—Subsec. (c)(1). Pub. L. 92-69 substituted provisions authorizing appropriations of amounts up to \$3,000,000 for each fiscal year 1968 through 1971, and such sums as may be necessary for each fiscal year 1972 through 1975, for provisions authorizing appropriations of amounts up to \$3,000,000 for each of the first four fiscal years following fiscal year in which this subchapter was enacted.

#### CHANGE OF NAME

Reference to Veterans Health Services and Research Administration (or to Department of Medicine and Surgery of the Veterans' Administration) deemed to refer to Veterans Health Administration pursuant to section 2 of Pub. L. 102-40, set out as a Renaming of Veterans Health Services and Research Administration note under section 301 of this title.

Reference to Department of Medicine and Surgery deemed to refer to Veterans Health Services and Research Administration of the Department of Veterans Affairs, pursuant to section 10 of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

#### TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

### § 8156. Coordination with health services development activities carried out under the National Health Planning and Resources Development Act of 1974

The Secretary and the Secretary of Health and Human Services shall, to the maximum extent practicable, coordinate programs carried out under this subchapter and programs carried out under part F of title XVI of the Public Health Service Act (42 U.S.C. 300t et seq.).

(Added Pub. L. 89-785, title II, § 203, Nov. 7, 1966, 80 Stat. 1375, § 5056; amended Pub. L. 94-581, title I, § 115(a)(2), Oct. 21, 1976, 90 Stat. 2853; Pub. L. 97-295, § 4(93), (95)(A), Oct. 12, 1982, 96 Stat. 1313; renumbered § 8156, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### REFERENCES IN TEXT

The National Health Planning and Resources Development Act of 1974, referred to in section catchline, is

Pub. L. 93-641, Jan. 4, 1975, 88 Stat. 2225, as amended, which is classified generally to subchapters XIII (§ 300k et seq.) and XIV (§ 300o et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 201 of Title 42 and Tables.

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part F of title XVI of the Public Health Service Act was added by act Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2273, and was redesignated as Part D by Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632. Part D of that Act is classified generally to Part D (§ 300t) of subchapter XIV of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5056 of this title as this section.

Pub. L. 102-83 substituted "The Secretary" for "The Administrator".

1982—Pub. L. 97-295, § 4(95)(A), substituted "Health and Human Services" for "Health, Education, and Welfare".

Pub. L. 97-295, § 4(93), inserted "(42 U.S.C. 300t et seq.)" after "part F of title XVI of the Public Health Service Act".

1976—Pub. L. 94-581 substituted "health services development activities carried out under the National Health Planning and Resources Development Act of 1974" for "programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965" in section catchline and "part F of title XVI" for "title IX" in text.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

### § 8157. Joint title to medical equipment

(a) Subject to subsection (b), the Secretary may enter into agreements with institutions described in section 8153(a) of this title for the joint acquisition of medical equipment.

(b)(1) The Secretary may not pay more than one-half of the purchase price of equipment acquired through an agreement under subsection (a).

(2) Any equipment to be procured under such an agreement shall be procured by the Secretary. Title to such equipment shall be held jointly by the United States and the institution.

(3) Before equipment acquired under such an agreement may be used, the parties to the agreement shall arrange by contract under section 8153 of this title for the exchange or use of the equipment.

(4) The Secretary may not contract for the acquisition of medical equipment to be purchased jointly under an agreement under subsection (a) until the institution which enters into the agreement provides to the Secretary its share of the purchase price of the medical equipment.

(c)(1) Notwithstanding any other provision of law, the Secretary may transfer the interest of the Department in equipment acquired through an agreement under subsection (a) to the institution which holds joint title to the equipment if the Secretary determines that the transfer would be justified by compelling clinical considerations or the economic interest of the Department. Any such transfer may only be made upon

agreement by the institution to pay to the Department the amount equal to one-half of the depreciated purchase price of the equipment. Any such payment when received shall be credited to the applicable Department medical appropriation.

(2) Notwithstanding any other provision of law, the Secretary may acquire the interest of an institution in equipment acquired under subsection (a) if the Secretary determines that the acquisition would be justified by compelling clinical considerations or the economic interests of the Department. The Secretary may not pay more than one-half the depreciated purchase price of that equipment.

(Added Pub. L. 102-405, title I, § 103(a)(1), Oct. 9, 1992, 106 Stat. 1973.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8158 of this title.

### § 8158. Deposit in escrow

(a) To facilitate the procurement of medical equipment pursuant to section 8157 of this title, the Secretary may enter into escrow agreements with institutions described in section 8153(a) of this title. Any such agreement shall provide that—

(1) the institutions shall pay to the Secretary the funds necessary to make a payment under section 8157(b)(4) of this title;

(2) the Secretary, as escrow agent, shall administer those funds in an escrow account; and

(3) the Secretary shall disburse the escrowed funds to pay for such equipment upon its delivery or in accordance with the contract to procure the equipment and shall disburse all accrued interest or other earnings on the escrowed funds to the institution.

(b) As escrow agent for funds placed in escrow pursuant to an agreement under subsection (a), the Secretary may—

(1) invest the escrowed funds in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;

(2) retain in the escrow account interest or other earnings on such investments;

(3) disburse the funds pursuant to the escrow agreement; and

(4) return undisbursed funds to the institution.

(c)(1) If the Secretary enters into an escrow agreement under this section, the Secretary may enter into an agreement to procure medical equipment if one-half the purchase price of the equipment is available in an appropriation or fund for the expenditure or obligation.

(2) Funds held in an escrow account under this section shall not be considered to be public funds.

(Added Pub. L. 102-405, title I, § 103(a)(1), Oct. 9, 1992, 106 Stat. 1974.)

#### SUBCHAPTER V—ENHANCED-USE LEASES OF REAL PROPERTY

### § 8161. Definitions

For the purposes of this subchapter:

(1) The term “enhanced-use lease” means a written lease entered into by the Secretary under this subchapter.

(2) The term “congressional veterans’ affairs committees” means the Committees on Veterans’ Affairs of the Senate and the House of Representatives.

(Added Pub. L. 102-86, title IV, § 401(a), Aug. 14, 1991, 105 Stat. 417.)

### § 8162. Enhanced-use leases

(a)(1) The Secretary may in accordance with this subchapter enter into leases with respect to real property that is under the jurisdiction or control of the Secretary. Any such lease under this subchapter may be referred to as an ‘enhanced-use lease’. The Secretary may dispose of any such property that is leased to another party under this subchapter in accordance with section 8164 of this title. The Secretary may exercise the authority provided by this subchapter notwithstanding section 8122 of this title, section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484), or any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section. The applicability of this subchapter to section 421(b) of the Veterans’ Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) is covered by subsection (c).

(2) The Secretary may enter into an enhanced-use lease only if the Secretary determines that—

(A) at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department;

(B) the lease will not be inconsistent with and will not adversely affect the mission of the Department; and

(C) the lease will enhance the use of the property.

(3) The provisions of the Act of March 3, 1931 (40 U.S.C. 276a et seq.), shall not, by reason of this section, become inapplicable to property that is leased to another party under an enhanced-use lease.

(4) A property that is leased to another party under an enhanced-use lease may not be considered to be unutilized or underutilized for purposes of section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

(b)(1) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall select the party with whom the lease will be entered into using selection procedures determined by the Secretary that ensure the integrity of the selection process.

(2) The term of an enhanced-use lease may not exceed—

(A) 35 years, in the case of a lease involving the construction of a new building or the substantial rehabilitation of an existing building, as determined by the Secretary; or

(B) 20 years, in the case of a lease not described in subparagraph (A).

(3)(A) Each enhanced-use lease shall be for fair consideration, as determined by the Secretary.

Consideration under such a lease may be provided in whole or in part through consideration in-kind.

(B) Consideration in-kind may include provision of goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space.

(4) Any payment by the Secretary for the use of space or services by the Department on property that has been leased under this subchapter may only be made from funds appropriated to the Department for the activity that uses the space or services. No other such payment may be made by the Secretary to a lessee under an enhanced-use lease unless the authority to make the payment is provided in advance in an appropriation Act.

(c)(1) Subject to paragraph (2), the entering into an enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) shall be considered to be prohibited by that section unless specifically authorized by law.

(2) The entering into an enhanced-use lease by the Secretary covering any land or improvement described in such section 421(b)(2) shall not be considered to be prohibited under that section if under the lease—

(A) the designated property is to be used only for child-care services;

(B) those services are to be provided only for the benefit of—

- (i) employees of the Department;
- (ii) individuals employed on the premises of such property; and
- (iii) employees of a health-personnel educational institution that is affiliated with a Department facility;

(C) over one-half of the employees benefited by the child-care services provided are required to be employees of the Department; and

(D) over one-half of the children to whom child-care services are provided are required to be children of employees of the Department.

(Added Pub. L. 102-86, title IV, § 401(a), Aug. 14, 1991, 105 Stat. 417.)

#### REFERENCES IN TEXT

Section 421(b) of the Veterans' Benefits and Services Act of 1988, referred to in subsecs. (a)(1) and (c), is section 421(b) of Pub. L. 100-322, title IV, May 20, 1988, 102 Stat. 553, which is not classified to the Code.

Act of March 3, 1931, referred to in subsec. (a)(3), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, known as the Davis-Bacon Act, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

#### § 8163. Designation of property to be leased

(a) If the Secretary proposes to designate a property to be leased under an enhanced-use lease, the Secretary shall conduct a public hearing before making the designation. The hearing shall be conducted in the community in which the property is located. At the hearing, the Sec-

retary shall receive the views of veterans service organizations and other interested parties regarding the proposed lease of the property and the possible effects of the uses to be made of the property under a lease of the general character then contemplated. The possible effects to be addressed at the hearing shall include effects on—

(1) local commerce and other aspects of the local community;

(2) programs administered by the Department; and

(3) services to veterans in the community.

(b) Before conducting such a hearing, the Secretary shall provide reasonable notice of the proposed designation and of the hearing. The notice shall include—

(1) the time and place of the hearing;

(2) identification of the property proposed to be leased;

(3) a description of the proposed uses of the property under the lease;

(4) a description of how the uses to be made of the property under a lease of the general character then contemplated—

(A) would contribute in a cost-effective manner to the mission of the Department;

(B) would not be inconsistent with the mission of the Department; and

(C) would not adversely affect the mission of the Department; and

(5) a description of how those uses would affect services to veterans.

(c)(1) If after a hearing under subsection (a) the Secretary intends to designate the property involved, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intention to so designate the property and shall publish a notice of such intention in the Federal Register.

(2) The Secretary may not enter into an enhanced-use lease until the end of a 60-day period of continuous session of Congress following the date of the submission of notice under paragraph (1). For purposes of the preceding sentence, continuity of a session of Congress is broken only by an adjournment sine die, and there shall be excluded from the computation of such 60-day period any day during which either House of Congress is not in session during an adjournment of more than three days to a day certain.

(3) Each notice under paragraph (1) shall include the following:

(A) An identification of the property involved.

(B) An explanation of the background of, rationale for, and economic factors in support of, the proposed lease.

(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed designation, together with a summary of the Secretary's evaluation of those views.

(D) A general description of the proposed lease.

(E) A description of how the proposed lease—

(i) would contribute in a cost-effective manner to the mission of the Department;

(ii) would not be inconsistent with the mission of the Department; and

(iii) would not adversely affect the mission of the Department.

(F) A description of how the proposed lease would affect services to veterans.

(4) Not less than 30 days before entering into an enhanced-use lease, the Secretary shall submit to the congressional veterans' affairs committees a report on the proposed lease. The report shall include—

(A) updated information with respect to the matters described in paragraph (3);

(B) a summary of a cost-benefit analysis of the proposed lease;

(C) a description of the provisions of the proposed lease; and

(D) a notice of designation with respect to the property.

(Added Pub. L. 102-86, title IV, §401(a), Aug. 14, 1991, 105 Stat. 419.)

#### **§ 8164. Authority for disposition of leased property**

(a) If, during the term of an enhanced-use lease or within 30 days after the end of the term of the lease, the Secretary determines that the leased property is no longer needed by the Department, the Secretary may initiate action for the transfer to the lessee of all right, title, and interest of the United States in the property by requesting the Administrator of General Services to dispose of the property pursuant to subsection (b). A disposition of property may not be made under this section unless the Secretary determines that the disposition under this section rather than under section 8122 of this title is in the best interests of the Department. The Administrator, upon request of the Secretary, shall take appropriate action under this section to dispose of property of the Department that is or has been subject to an enhanced-use lease.

(b) A disposition under this section may be made for such consideration as the Secretary and the Administrator of General Services jointly determine is in the best interest of the United States and upon such other terms and conditions as the Secretary and the Administrator consider appropriate.

(c) Not less than 90 days before a disposition of property is made under this section, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intent to dispose of the property and shall publish notice of the proposed disposition in the Federal Register. The notice shall describe the background of, rationale for, and economic factors in support of, the proposed disposition (including a cost-benefit analysis summary) and the method, terms, and conditions of the proposed disposition.

(Added Pub. L. 102-86, title IV, §401(a), Aug. 14, 1991, 105 Stat. 420.)

#### **SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 8162, 8165 of this title.

#### **§ 8165. Use of proceeds**

(a)(1) Of the funds received by the Department under an enhanced-use lease and remaining after any deduction from such funds under subsection (b), 75 percent shall be deposited in the nursing

home revolving fund established under section 8116 of this title and 25 percent shall be credited to the Medical Care Account of the Department for the use of the Department facility at which the property is located.

(2) Funds received by the Department from a disposal of leased property under section 8164 of this title and remaining after any deduction from such funds under the laws referred to in subsection (c) shall be deposited in the nursing home revolving fund.

(b) An amount sufficient to pay for any expenses incurred by the Secretary in any fiscal year in connection with an enhanced-use lease shall be deducted from the proceeds of the lease for that fiscal year and may be used by the Secretary to reimburse the account from which the funds were used to pay such expenses.

(c) Subsection (a) does not affect the applicability of section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485) or the Act of June 8, 1896 (40 U.S.C. 485a), with respect to reimbursement of the Administrator of General Services for expenses arising from any disposal of property under section 8164 of this title.

(Added Pub. L. 102-86, title IV, §401(a), Aug. 14, 1991, 105 Stat. 421.)

#### **REFERENCES IN TEXT**

Act of June 8, 1896, referred to in subsec. (c), is act June 8, 1896, ch. 373, 29 Stat. 267, as amended, which is classified in part to section 485a of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Tables.

#### **§ 8166. Construction standards**

(a) Unless the Secretary provides otherwise, the construction, alteration, repair, remodeling, or improvement of the property that is the subject of the lease shall be carried out so as to comply with all standards applicable to construction of Federal buildings. Any such construction, alteration, repair, remodeling, or improvement shall not be subject to any State or local law relating to building codes, permits, or inspections unless the Secretary provides otherwise.

(b) Unless the Secretary has provided that Federal construction standards are not applicable to a property, the Secretary shall conduct periodic inspections of any such construction, alteration, repair, remodeling, or improvement for the purpose of ensuring that the standards are met.

(Added Pub. L. 102-86, title IV, §401(a), Aug. 14, 1991, 105 Stat. 421.)

#### **§ 8167. Exemption from State and local taxes**

The interest of the United States in any property subject to an enhanced-use lease and any use by the United States of such property during such lease shall not be subject, directly or indirectly, to any State or local law relative to taxation, fees, assessments, or special assessments, except sales taxes charged in connection with any construction, alteration, repair, remodeling, or improvement project carried out under the lease.

(Added Pub. L. 102-86, title IV, §401(a), Aug. 14, 1991, 105 Stat. 421.)

**§ 8168. Limitation on number of agreements**

(a) Not more than 20 enhanced-use leases may be entered into under this subchapter, and not more than 10 such leases may be entered into during any fiscal year.

(b) An enhanced-use lease under which the primary use made of the leased premises is the provision of child-care services for employees of the Department shall not be counted for the purposes of subsection (a).

(Added Pub. L. 102-86, title IV, § 401(a), Aug. 14, 1991, 105 Stat. 421.)

**§ 8169. Expiration**

The authority of the Secretary to enter into enhanced-use leases under this subchapter expires on December 31, 1995.

(Added Pub. L. 102-86, title IV, § 401(a), Aug. 14, 1991, 105 Stat. 422; amended Pub. L. 103-452, title I, § 103(d), Nov. 2, 1994, 108 Stat. 4786.)

**AMENDMENTS**

1994—Pub. L. 103-452 substituted “December 31, 1995” for “December 31, 1994”.

**CHAPTER 82—ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS**

Sec.

8201. Coordination with public health programs; administration.

**SUBCHAPTER I—PILOT PROGRAM FOR ASSISTANCE IN THE ESTABLISHMENT OF NEW STATE MEDICAL SCHOOLS**

8211. Declaration of purpose.

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8231. Declaration of purpose.

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**SUBCHAPTER IV—EXPANSION OF DEPARTMENT HOSPITAL EDUCATION AND TRAINING CAPACITY**

8241. Expenditures to remodel and make special allocations to Department hospitals for health manpower education and training.

**AMENDMENTS**

1991—Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404, substituted “DEPARTMENT” for “VETERANS’ ADMINISTRATION” in headings for subchapters III and IV and “Department” for “Veterans’ Administration” in item 8241.

Pub. L. 102-40, title IV, § 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 5070 to 5096 as 8201 to 8241, respectively.

**§ 8201. Coordination with public health programs; administration**

(a) The Secretary and the Secretary of Health and Human Services shall, to the maximum extent practicable, coordinate the programs carried out under this chapter and the programs carried out under titles VII, VIII, and IX of the Public Health Service Act (42 U.S.C. 292 et seq.).

(b) The Secretary may not enter into any agreement under subchapter I of this chapter after September 30, 1979.

(c) The Secretary, after consultation with the special medical advisory committee established pursuant to section 7312(a) of this title, shall prescribe regulations covering the terms and conditions for entering into agreements and making grants under this chapter.

(d) Payments made pursuant to grants under this chapter may be made in installments, and either in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(e) In carrying out the purposes of this chapter, the Secretary may lease to any eligible institution for such consideration and under such terms and conditions as the Secretary deems appropriate, such land, buildings, and structures (including equipment therein) under the control and jurisdiction of the Department as may be necessary. The three-year limitation on the term of a lease prescribed in section 8122(a) of this title shall not apply with respect to any lease entered into pursuant to this chapter, but no such lease may be for a period of more than 50 years. Any lease entered into pursuant to this chapter may be entered into without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Notwithstanding section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), or any other provision of law, a lease entered into pursuant to this chapter may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration of the lease.

(f) In making grants under this chapter, the Secretary shall give special consideration to applications from institutions which provide reasonable assurances, which shall be included in the grant agreement, that priority for admission to health manpower and training programs carried out by such institutions will be given to otherwise qualified veterans who during their military service acquired medical military occupation specialties, and that among such qualified veterans those who served during the Vietnam era and those who are entitled to disability compensation under laws administered by the Secretary or whose discharge or release was for a disability incurred or aggravated in line of duty will be given the highest priority. In carrying out this chapter and section 7302 of this title in connection with health manpower and training programs assisted or conducted under this title or in affiliation with a Department medical facility, the Secretary shall take appropriate steps to encourage the institutions involved to afford the priorities described in the first sentence of this subsection and to advise all qualified veterans with such medical military occu-